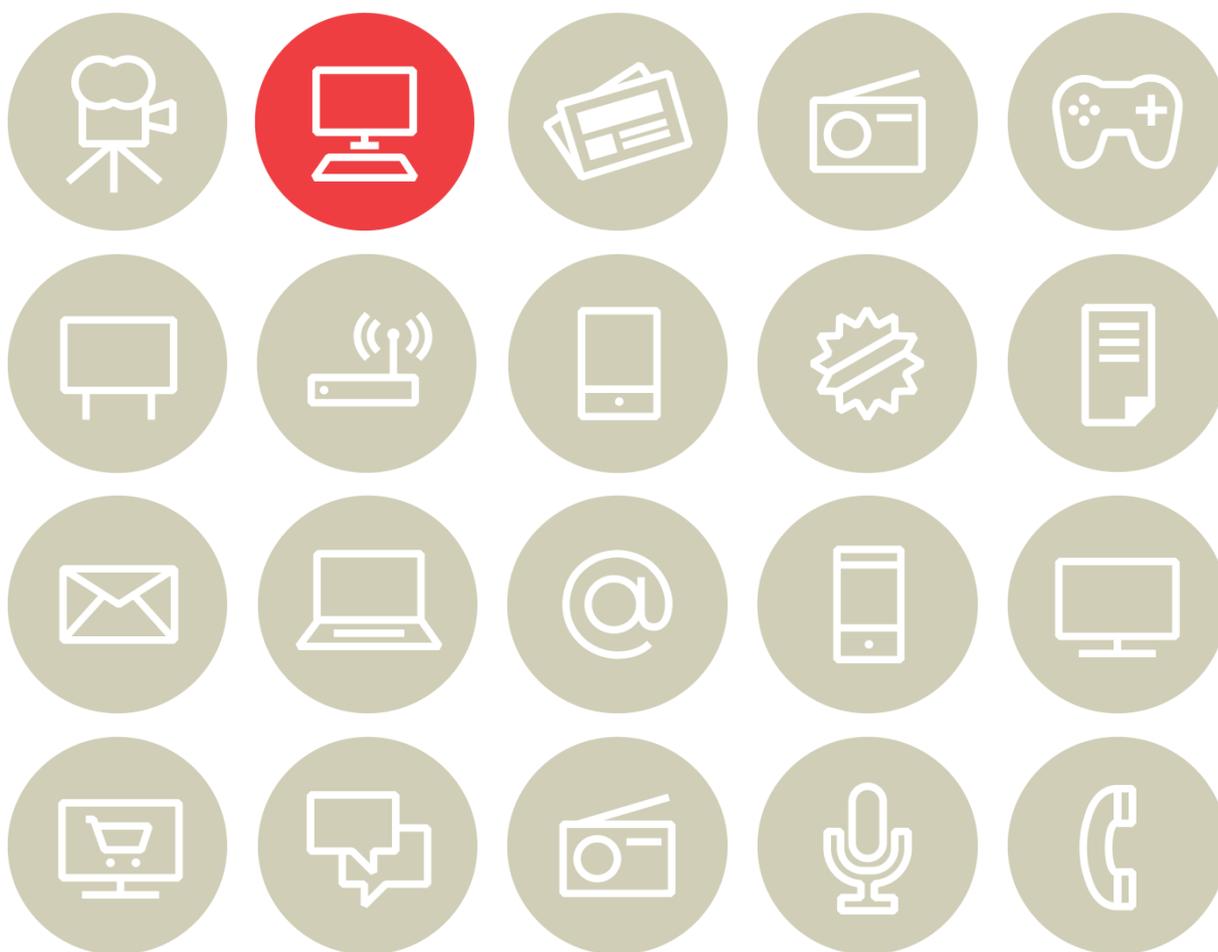


Online Advertising Survey 2012

ASA Compliance Survey

22 March 2013



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1. Introduction

The Advertising Standards Authority (ASA) is the UK self-regulatory body for maintaining standards in advertising. It does this by administering the mandatory Advertising Codes and by actively monitoring compliance with them.

Following the extension of the ASA's online remit in 2011 to cover marketing claims on companies' own websites and in other non-paid-for space online under their control, the ASA's Compliance team has undertaken this survey to determine the compliance rate of this type of online marketing communication. As of 1 March 2011, these marketing communications have had to comply with The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ('the CAP Code'). The same survey was conducted in 2011, and this survey serves as a comparison against it.

The CAP Code applies to:

Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.

1.1 Summary

- Companies' own website advertising maintains a high Advertising Code compliance rate.
- No change in compliance rate between 2012 and 2011.
- 95% of websites and 97.8% of web pages did not contain obvious breaches of the Code in 2012.
- 95% of websites and 96% of web pages did not contain obvious breaches of the Code in 2011.
- Breaches included the misleading omission of mandatory charges / taxes and misleading claims for moisturisers.
- Findings again challenge the view that website advertising is a 'Wild West'.
- But problems are being addressed: We will conduct future sector compliance project in relation to non-inclusive pricing.

1.2 Findings

The 2011 Online Advertising Survey was conducted between 1 January and 28 February 2011 to assess compliance rates of online marketing material before the extension of the ASA's remit in March 2011.

The 2012 Online Advertising Survey followed the same approach. We assessed marketing communications on 120 websites between 15 September and 15 October 2012. The websites represented small, medium and large enterprises and were selected from a wide range of different advertising sectors including entertainment, media and leisure; retail; travel; technology; education and charities; automotive; toiletries and cosmetics; and FMCG (fast moving consumer goods).

We assessed five pages on each website. Each webpage included at least one marketing communication. In common with past ASA surveys and the survey of 2011, we recorded only what we considered to be obvious breaches of the CAP Code and not potential breaches. Obvious breaches are those that do not require an investigation to determine if the CAP Code has been breached i.e. if the ad self-evidently does not comply with a rule or if the ASA has previously determined that the particular advertising claim is in breach. The findings of the survey should be understood in this context.

When breaches were identified, we contacted the website owners concerned and successfully obtained assurances that they would change their marketing communications to comply with the CAP Code. We also advised them to consult the CAP Copy Advice team for guidance on future marketing communications.

We found:

- six of the 120 websites assessed included at least one marketing communication that was clearly in breach of the CAP Code; a compliance rate of 95%, identical to the 2011 result.
- 13 of the 600 pages assessed included a marketing communication that was clearly in breach of the CAP Code; a compliance rate of 97.8% compared to 22 of 600 pages in 2011 (a compliance rate of 96%).
- two of the six websites that included breaches of the CAP Code came from the Entertainment, Media and Leisure sector, and related to the misleading omission of mandatory charges (e.g. booking charges) from the headline price. The advertisers in question quoted face value ticket prices exclusive of compulsory ticket charges such as booking fees. These marketing communications seemed likely to be in breach of CAP Code rule 3.18, which requires that quoted prices must include all non-optional taxes, duties, fees and charges that apply to all or most buyers.
- another two of the six websites that included breaches of the CAP Code came from the toiletries and cosmetics sector and related to misleading claims regarding the efficacy of moisturising creams and serums. The 2011 Online Advertising Survey recorded no breaches of the Code in relation to the toiletries and cosmetics sector. This represented a drop in the compliance rate to 60% for this sector compared to the previous 100% record in the 2011 survey.

The two breaches in the toiletries and cosmetics sector exceeded the ASA's position in relation to acceptable claims for moisturising products. We considered that the ads were likely in breach of CAP Code rules 3.7, 3.11 and 12.1, which require that advertisers should hold documentary evidence to prove claims that are capable of objective substantiation before publishing ads.

- while the other two of the six websites that included breaches of the CAP Code came from the technology sector and related to misleading claims regarding the advertising of VAT-exclusive prices. This resulted in a compliance rate of 80%, which compares

unfavourably with the previous 100% record for the technology sector in the 2011 survey.

The two breaches in the technology sector related to products clearly aimed at consumers (as opposed to businesses). The marketing communications quoted VAT-exclusive prices. The ads seemed to be in breach of CAP Code rule 3.18, which requires that quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. VAT-exclusive prices may be given only if all consumers to whom the price claim is addressed pay no VAT or can recover VAT; marketing communications that quote VAT-exclusive prices must prominently state the amount or rate of VAT payable.

Understood in the context of a snapshot survey looking at different sized companies across a range of different business sectors, the findings of the surveys suggest that immediately identifiable breaches of the CAP Code are rare. Whilst encouraging, these findings should be set against the ASA's experience of regulating website marketing communications, which indicate that levels of compliance vary significantly between sectors and that breaches of the CAP Code (determined through investigation of consumer complaints) are more commonplace than these surveys suggest. In combination, the ASA's proactive and reactive regulation works to protect consumers against misleading or otherwise irresponsible advertising and promote fair competition for online businesses.

In terms of the complaints received by the ASA about specific sectors, between 1 March 2011 and 15 October 2012 the ASA recorded 2,971 breaches of the CAP Code related to online marketing communications. 582 (or 20%) of those cases were clear breaches of the CAP Code and were dealt with expediently by the Compliance team. Of the 2,971 breaches of the CAP Code, 814 (27%) related to the health and beauty sector, 337 (11%) to the retail sector and 295 (10%) to the leisure sector.

The ASA's remit now extends to businesses that advertise online only or primarily, rather than in press or magazine titles, for example. This has brought businesses to the ASA's attention that have until now had little or no dealings with or awareness of the ASA, for example complementary and alternative medicine practitioners. Accordingly, the ASA has investigated claims in online marketing communications for various therapies and products which had traditionally not appeared in press or magazine media.

The design of the survey however was slanted towards the entertainment and leisure sectors due to the methodology used to collate our findings. In that respect it shifted in focus slightly from the brunt of the ASA's workload under the extended remit which has involved responding to and resolving a significant number of complaints about the health and beauty sector and particularly in relation to ads produced by complementary and alternative medicine practitioners.

The methodology we used (explained further in Section 3 - Methodology) to identify websites for assessment for this survey was weighted toward advertisers who have marketing budgets to spend on online display advertising using JPG, GIF and Flash files. The survey is weighted toward assessment of websites in the entertainment media and leisure sector because, according to Ebiquity figures, marketers in that sector utilise the largest JPG, GIF and Flash advertising from around 200 UK Internet sites. We surmise that there is little third party marketing ad spend by marketers in the health sector (areas in which Compliance has received the most complaints) and particularly those advertisers who market complementary and alternative health therapies. Therefore those sectors were unlikely to appear in our Ebiquity search and so the survey did not include ads that are likely to be classified as belonging to complementary and alternative medicine practitioners.

Instead, the entertainment media and leisure sector emerged as the largest sector that was the subject of this survey.

The survey recorded two breaches from 43 websites in the entertainment, media and leisure sector; a 95% compliance rate. This is an improvement from the 2011 survey, in which four breaches were recorded from 47 websites resulting in a 92% compliance rate.

The toiletries and cosmetics sector registered two breaches from the five websites we assessed. We are cautious about drawing conclusions from this given the very small sample size. In 2011, we undertook a skin care monitoring project recording 68 obvious breaches of the CAP Code. We contacted the advertisers to ensure that the marketing communications were amended to comply with the rules. We noted that two of the breaches in this survey were related to marketing communications produced by advertisers contacted during the 2011 survey. We contacted them again and ensured that they amended their marketing communications.

As with the results of the 2011 survey, the findings appear to refute the view that websites commonly and flagrantly include advertising that obviously ignores generally accepted standards on truthfulness, harm and offence. However, there is still scope for improvement in the overall compliance rate, which we will continue to address in the coming year. Future sector compliance projects for 2013 include those aimed specifically at consumer marketing communications featuring non-inclusive VAT pricing. The Compliance team has already taken steps to ensure that websites include inclusive-VAT pricing where necessary and work in this area is ongoing.

2. About the ASA and CAP

2.1 Background

The ASA is the independent body that administers the UK Advertising Codes which set standards for the content, scheduling and placement of ads. It is responsible for ensuring that the advertising self-regulatory system works in the public interest and the interest of responsible businesses. It achieves this by investigating complaints, proactively identifying and resolving breaches of the Advertising Codes, using research to ensure its decisions take account of generally accepted standards and by promoting and enforcing high standards in ads generally.

The Committee of Advertising Practice (CAP) is the body that created and revises the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code). Its members include trade and professional bodies representing advertisers, agencies, media owners and the sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code. The Compliance teams work to ensure that ads comply with the Advertising Codes and with ASA adjudications.

The teams follow up ASA adjudications, monitor both broadcast and non-broadcast ads and take immediate action to ensure ads that breach the Advertising Codes are removed or suitably amended. One of the teams' objectives is to help create a level-playing field for marketers in each sector; it achieves that by communicating ASA decisions with sector-wide ramifications.

The Compliance teams conduct surveys to assess compliance rates for ads in particular industries, sectors or media. The surveys help to identify marketing trends and to anticipate subjects of concern that might need to be addressed by the ASA, in its interpretation of the Advertising Codes, or CAP in their setting of standards in the Advertising Codes.

As of 1 March 2011, the remit of the CAP Code was extended to cover:

Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.

This remit extension brought enhanced protection for consumers and businesses. The CAP Code already covered internet ads in paid-for space, like banner ads, pop-ups and paid search results. The extended remit means that the same standards apply to all ads and marketing communications on companies' own websites and in other non-paid-for space online under their control, like advertiser-controlled pages on Facebook or Twitter.

The CAP Code, which includes rules to make sure ads do not mislead, harm or offend, applies to marketing communications on UK websites regardless of the sector or size of business or organisation behind the website. (Note: the extended online remit does not cover ads for causes or ideas.)

2.2 The CAP Code

The purpose of the CAP Code is to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both consumers and the industry. All ads should be legal, decent, honest and truthful. They should be prepared with a sense of responsibility to consumers and society and be in line with the accepted principles of fair competition. Ads should not mislead or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

2.3 Survey Objectives

The purpose of the survey was to:

- Identify obvious breaches of the CAP Code;
- Contact advertisers responsible for ads that obviously breach the CAP Code and obtain an assurance that those ads will comply fully in future; and
- Compare the compliance rate for companies' own ads on their own websites with that of the 2011 Online Advertising Survey and comment on the respective findings.

In general terms, undertaking and publishing proactive surveys like this one acts as a deterrent to bad practice and an encouragement to good practice. It is one in a range of means and ways that the ASA actively enforces compliance with the Advertising Codes, without the need for a public complaint.

3. Methodology

3.1 General

The objective of this survey was to measure a compliance rate for marketing communications falling within CAP's extended online remit and to compare that rate with the results of the Online Advertising Survey of 2011. As with the 2011 survey, we used the Ebiquity Media Monitoring database to help categorise different business sectors. For each sector we used information relating to 'marketing spend on third party websites' to identify a broad range of companies. The review period ran from 15 September 2012 to 15 October 2012.

Detail:

We used Ebiquity, an online provider of ad monitoring in the UK, to identify websites for assessment. Using the Ebiquity Media Monitoring database, we located the spend figures for internet advertising for the year 2011.

Ebiquity explains how it captures this data:

Ebiquity internet spend data is calculated from capturing mainly JPG, GIF and Flash advertising from around 200 UK Internet sites¹. Those sites include the top sites as measured by comScore, although they do not currently include areas where a 'log on' is required. The spend is calculated for each captured advert, based on the volume of daily comScore impression data and the estimate of the cost for each type of advert within each type of website. The resulting cost is the most accurate reflection of the spend for each ad on the sites it appeared, but DOES NOT reflect the expenditure for either the entire campaign or the entire Internet display market.

Please note that the results gleaned from Ebiquity do not include paid-for search advertising (i.e. sponsored advertising on search engine websites). Figures for sponsored search advertising were not available for either the 2011 or 2012 Online Advertising Surveys.

As with the Online Advertising Survey of 2011, we used this data because it was more likely to capture businesses who had an internet presence: we assumed that businesses who undertake advertising on third party websites operate websites (accessible from their internet banner ads, for example). The businesses listed in Ebiquity that spent money on display internet advertising gave us a method of finding a 'universe of websites' owned by businesses operating in the UK.

Ebiquity divides total spend into the following sectors and ranks the sectors in order of spend: Entertainment, Media and Leisure (EML), Finance, Retail, Technology, Travel, Education and Charities, Automotive, Toiletries and Cosmetics, Fast Moving Consumer Goods (FMCG), Government and Utilities, Pharmaceutical, Electrical and Household and "Other". We excluded Finance because the ASA regulates only the non-technical elements of advertising in this area. Those aspects of non-broadcast financial advertising that the

¹ Ebiquity changed their methodology in January 2011 so that the amount of UK internet sites subject to data capture was reduced from 380 to 200. This enabled Ebiquity to visit fewer sites more often to accurately capture more information from the UK's most popular URL's.

ASA does regulate, i.e. serious or widespread offence, social responsibility and the truthfulness of claims not related to the technical elements of the product or service are unlikely to be clear cut breaches that could be assessed effectively as part of this survey. The spend of the last five sectors i.e. Government and Utilities, Pharmaceutical, Electrical and Household, and “Other” was minute in comparison to the other eight sectors. They comprised just four per cent of the total spend. So we omitted those sectors to give us a total of eight sectors to examine. Ebiquity lists the total number of advertisers per sector.

We divided the number of advertisers in any given sector by the total number of advertisers for the eight sectors to establish a percentage figure for each sector based on market size by the number of participants.

Each of the 120 websites typically included a large number of marketing communications, so we decided that it was practicable to review five webpages from each website. If the advertiser concerned had a Facebook or Twitter page then we assessed those pages as well. Each page had to include an ad or other form of marketing communication.

Finally, we divided the 120 websites by the relevant percentage figure to establish the number of websites we needed to assess in any given sector.

This led us to review:

- 43 websites in Entertainment, Media and Leisure (EML)
- 24 websites in Travel
- 19 websites in Retail
- 11 websites in Education and Charities
- 10 websites in Technology
- 5 websites in Toiletries and Cosmetics
- 4 websites in Automotive
- 4 websites in Fast Moving Consumer Goods (FMCG)

Ebiquity provides a breakdown, per sector, of spend by individual advertisers on third party websites. The results were ranked in order of spend by individual advertisers. So that we had an impartial selection of websites we randomised the results in each category using Excel so that we had a mix of large, medium and small spenders. Once each list for each sector had been randomised, we had a list of advertisers for assessment. We selected the websites for examination by searching the list methodically one by one and looking for websites that featured five pages that we could assess. If a website seemed to have five web pages that were within the remit of the CAP Code, we assessed the content to determine whether any of the pages contained material which was likely to breach the ad rules.

Firstly, we had to determine if a website fell within the ASA’s jurisdiction. A website is determined to fall within the remit of the ASA if it:

- originates in the UK or
- has a top level domain “UK” or
- gives a registered office address in the UK.

Websites which include marketing communications that are clearly targeted at UK consumers, but which originate from a country that does not have an established complaints referral system may also fall within the jurisdiction of the ASA. Criteria that help to determine if a marketing communication is directed at UK consumers include:

- providing prices in sterling;
- inviting consumers to contact a UK telephone number or UK geographic address for support;
- inviting consumers to visit physical premises in the UK;
- being subject to regulation under other UK regulators (for example, the Gambling Commission)

The CAP Code excludes from remit editorial content, press releases, political advertisements, corporate reports, natural search results on price comparison websites, heritage advertising, investor relations material and content that promotes causes or ideas.

We assessed in-remit website material with particular regard to the content of the communication and the context in which it appeared.

If we identified a probable breach of the rules, the Compliance team contacted the advertiser concerned and received assurances that they would comply with the CAP Code.

4. Data tables

Table 1: Number of websites assessed by sector

Sector	Total amount of advertisers per sector ²	Relative market size of sector in relation to all advertisers ³ by %	Total number of websites assessed by sector
Entertainment Media & Leisure	2,584	36%	43
Travel	1,456	20%	24
Retail	1,153	16%	19
Education & Charities	624	9%	11
Technology	610	9%	10
Toiletries & Cosmetics	276	4%	5
Automotive	250	3%	4
FMCG	218	3%	4
Total	7,171	100%	120

² Ebiquity figures on the total number of companies, per sector, who spend on internet display / flash ads.

³ Spending on internet display/flash ads.

Table 2: Number of breaches by sector

	Number of websites assessed	Websites including at least one clear breach of the CAP Code
Entertainment Media & Leisure	43	2
Travel	24	0
Retail	19	0
Education & Charities	11	0
Technology	10	2
Toiletries & Cosmetics	5	2
Automotive	4	0
FMCG	4	0
Total	120	6

Appendix 1

CAP Code: Relevant rules

3.7

Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

3.11

Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.

3.18

Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. VAT-exclusive prices may be given only if all or most consumers pay no VAT or can recover VAT; marketing communications that quote VAT-exclusive prices must prominently state the amount or rate of VAT payable if some consumers are likely to pay VAT.

12.1

Objective claims must be backed by evidence, if relevant consisting of trials conducted on people. If relevant, the rules in this section apply to claims for products for animals. Substantiation will be assessed on the basis of the available scientific knowledge.

Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA or EMEA, or for a CE-marked medical device. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.

Secondary medicinal claims made for cosmetic products as defined in the appropriate European legislation must be backed by evidence. These are limited to any preventative action of the product and may not include claims to treat disease.

Copy Advice

Advertisers are reminded that CAP operates a Copy Advice service which can be helpful when devising copy or checking whether the content of online marketing material is in breach of the CAP Code.

CAP Copy Advice provides a wealth of guidance online, including a searchable database of advice that is regularly updated. The Copy Advice team also provides a free bespoke advice service. Although the advice is not binding on the ASA Council, the team can help if you are in doubt about CAP Code requirements or would like advice on a particular point.

You can reach the Copy Advice team by phone on 020 7492 2100, (or by fax on 020 7404 3404). If you want to submit a bespoke copy advice enquiry, please use the online advice [request form](#) (you will need to register and sign in to do this, but this is free). We also recommend using CAP Advice and Training, a range of bespoke advice, training events and online resources available [here](#).

CAP Copy Advice also provides a [website audit service](#). The Audits involve a dedicated and expert assessment of marketing communications on your website with a view to encouraging and promoting compliance with the advertising rules. With tips and tools to guide you online and offline, CAP Website Audits will help you to comply with the advertising rules now and in the future.

Website Audits identify:

In general terms

- The parts of your website that are likely to feature marketing communications covered by the advertising rules;
- The broad regulatory issues raised by marketing communications on your website e.g. price claims; health and nutrition claims; availability of goods or services; environmental claims; protection of under-18s and children etc.
- The sections of the CAP Code and CAP Guidance that are most relevant to the product or service you are providing and the types of claims you are making;
- Relevant additional CAP Advice and Training e.g. forthcoming advice seminars.

In specific terms

- Examples of marketing communications on your website that raise compliance issues under the CAP Code and, if relevant, advice from CAP's Copy Advice team about how to amend them;
- ASA adjudications or other information relevant to potential breaches of the CAP Code identified on your website;
- For aftercare relating to the Audit, the name and contact details of the Copy Advice expert who has conducted the Audit

A standard Audit costs £960 (800 + VAT @20%) and takes up to 10 working days to complete. Non-standard requests that require more extensive use of our resources may be subject to an additional charge and/or additional time to complete.

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