

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

Charleston Child, LLC)
)
 Petitioner,)
)
 v.)
)
 ILLUMINADA PATIO HUNTER and)
 RONALD LEWIS HUNTER)
)
 Respondents.)

Cancellation No. 92044330 - 576431064

**MOTION FOR CAUSE TO SET ASIDE THE NOTICE OF DEFAULT
AGAINST THE RESPONDENTS**

COME NOW, ILLUMINADA PATIO HUNTER and RONALD LEWIS HUNTER (“the HUNTERS”) and file this Motion for Cause to Set Aside the Notice of Default Against the Respondents in the above matter of Charleston Child, LLC v. Illuminada Patio Hunter and Ronald Lewis Hunter, Cancellation No. 92044330. The Respondents seek to show good and sufficient cause as follows:

On March 4, 2005, the Petitioner filed its Petition to Cancel relating to U.S. Trademark Registration 2,790,535 for “CHARLESTON CHILD.” On March 18, 2005, the Trademark Trial and Appeal Board (TTAB) mailed notice of the Petition to Cancel to the Respondents. In April, 2005, Respondents contacted its counsel, Kilpatrick Stockton LLP, to assist in preparing an Answer in response to the Petition to Cancel.

Respondents’ counsel prepared and filed an Answer to Petition for Cancellation (the “Answer”) on April 27, 2005. Respondents’ counsel believes that it

timely filed the Answer by mailing the Answer to the TTAB via United States First Class mail to "MAIL STOP TTAB/FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451." Respondents' counsel believed that it had complied with the certificate of mailing procedure outlined by 37 C.F.R. 2.197(a) by mailing the Answer to the above address. This is the same address that the Petitioner had mailed its initial Petition to Cancel, and the address was used by the Respondents to mail the Answer to the TTAB on April 27, 2005. On the same date, Respondents' counsel also mailed a copy of the Answer to Petitioner's counsel, Mr. Scott J. Fields, Esq. of the National IP Rights Center, LLC to "550 Township Line Road, Suite 400, Blue Bell, PA 19422."

On July 7, 2005, the TTAB mailed Notice of Default to the Respondents. The Respondents hereby move to show cause that the Notice of Default against the Respondents should be set aside for at least the following reasons.

Respondents' Delay Was Not a Result of Willful Misconduct or Gross Neglect

The Respondents contacted their counsel, Kilpatrick Stockton LLP, in April, 2005. Respondents' transmitted a copy of the Petition to Cancel to Mr. Christopher J. Chan at Kilpatrick Stockton LLP on April 27, 2005. *See Exhibit A.* Respondents' counsel then prepared and filed the Answer on the April 27, 2005 deadline to respond to the Petition to Cancel. *See Exhibit B,* copy of the Answer. Respondents' counsel mailed the Answer to the TTAB via United States Postal Service first class mail on April 27, 2005 to "MAIL STOP TTAB/FEE, Commissioner for Trademarks, P.O.

Box 1451, Alexandria, VA 22313-1451,” which was the same mailing address that the Petitioner mailed the Petition to Cancel. Respondents do not believe there was any delay in filing the Answer, however, due to inadvertent errors in the Answer, Respondents believe that the Answer may have been misclassified or otherwise not received by the TTAB.

The Answer filed on April 27, 2005 is believed to have contained two inadvertent errors, one in the TTAB Cancellation number and the other in the trademark registration number. The TTAB Cancellation number was inadvertently keyed in by Respondents’ counsel as “92004430” and should have been “92044330.” The trademark registration number was inadvertently keyed in by Respondents’ counsel as “22,790,535” and should have been “2,790,535.” Both of these errors were inadvertent and were not intentional. Respondents’ counsel believes that the TTAB may have associated the Answer with Cancellation number 92004430 instead of 92044330.

The errors were not willful or due to gross neglect by the Respondents or their counsel. Respondents and their counsel believed that a sufficient Answer had been filed by the April 27, 2005 deadline, and neither realized that the TTAB had neither received the Answer or that the Answer contained inadvertent errors until the TTAB mailed the recent notice of default to the Respondents on July 7, 2005.

If the Respondents’ Answer mailed on April 27, 2005 was not timely received by the TTAB, Respondents request that the TTAB set aside the notice of default against the Respondents in this proceeding and enter the Respondents’ initial Answer,

and in the alternative, consider entry of the Respondents' Amended Answer.

Respondents' Amended Answer corrects the inadvertent errors of the initial Answer with the correct Cancellation number and trademark registration number. The Amended Answer is attached as Exhibit B.

Petitioner Will Not be Substantially Prejudiced by the Delay

On April 27, 2005, Respondents also mailed a copy of the Answer via United States Postal Service first class mail to Petitioner's counsel, Mr. Scott J. Fields, Esq. of the National IP Rights Center, LLC to "550 Township Line Road, Suite 400, Blue Bell, PA 19422." Petitioner has not indicated to the Respondents that it did not receive the Answer, nor is it believed that Petitioner has complained to the TTAB that it did not receive a copy of the Answer. Even though the Answer contained two inadvertent errors, one in the TTAB Cancellation number and the other in the trademark registration number, the Answer should have been readily identifiable to the Petitioner since the caption of the TTAB proceeding and the trademark name at issue "A CHARLESTON CHILD" were correctly and plainly stated in the Answer. Therefore, Petitioner would not be substantially prejudiced by the Respondents' alleged delay since Petitioner should have received a copy of the Respondents' Answer mailed to the Petitioner on April 27, 2005, and Petitioner should have been able to recognize the matter that the Respondents' Answer related to.

Respondents Have a Meritorious Defense to the Action

Respondents believe that a meritorious defense to the Petitioner's action was raised in the initial Answer mailed April 27, 2005. Respondents believe that the Answer contained a meritorious response to each allegation raised in the Petition to Cancel. In response to each of the grounds of cancellation raised by the Petitioner, Respondents denied statements in the allegations numbered 2, 3, and 4a through 4c. Respondents acknowledged statements in the allegations numbered 1 and 2. Therefore, the Respondents believe that a meritorious defense to the action was raised in their Answer.

Conclusion

For at least the foregoing reasons, the TTAB's Notice of Default against the Respondents should be set aside and the Respondents' Answer mailed April 27, 2005 should be entered. In the alternative, the TTAB's Notice of Default against the Respondents should be set aside and the Respondents' Amended Answer enclosed with this motion should be entered without prejudice to the Respondents' defense of the Petitioner's cancellation.

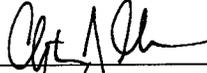
This 8th day of August, 2005.

EV372987051US

Motion for Cause to Set Aside the Notice of Default Against the Respondents

Mailing Date: 8 August 2005

Respectfully Submitted,



Anthony B. Askew
Christopher J. Chan

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (main)
(404) 815-6555 (fax)

Attorneys for Respondents

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
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Charleston Child, LLC)
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 Petitioner,)
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) Cancellation No. 92044330
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 RONALD LEWIS HUNTER,)
 Respondents.)

CERTIFICATE OF MAIL

MAIL STOP TTAB/FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Date of Deposit: **8 August 2005**

I hereby certify that this AMENDED ANSWER TO PETITION TO CANCELLATION is being deposited with the United States Postal Service via Express Mail, EV372987051US on the date indicated above and is addressed to United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451.



Christopher J. Chan

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (main)
(404) 815-6555 (fax)

Attorneys for Respondents





Fax Cover Sheet

FedEx Kinko's of Charleston-West Ashley

Telephone: 843.571.4746

Fax: 843.571.5411

Date _____

Number of pages _____ (including cover page)

To:

From:

Name

Christa Chan

Name

Ms & Mrs Chen

Company _____

Company _____

Telephone _____

Telephone _____

Fax _____

Comments _____

TTAB

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

In the matter of trademark Registration No.: 2,790,535

For the mark: A CHARLESTON CHILD
Date Registered: December 9, 2003

CHARLESTON CHILD, LLC

v.

ILUMINADA PATIO HUNTER and
RONALD LEWIS HUNTER

PETITION TO CANCEL

CHARLESTON CHILD, LLC, a South Carolina limited liability company,
with a business address at 92 Folly Road, Charleston, SC 29407, hereby
petitions for cancellation of the above registration, and states as follows:

1. To the best of petitioner's knowledge, the name of the current
owners of the registration are Iluminada Patio Hunter and Ronald Lewis Hunter,
individuals, with an address of 10 Lavington Road, Charleston, SC 29407.

2. The above-identified petitioner believes that it will be damaged
by the above-identified registration, and hereby petitions to cancel the
same.

Adjustment date: 03/17/2005 SWILSDH1
03/16/2005 SWILSDH1 00000055 76431064
01 FC:6401 -300.00 OP

3. Petitioner has used the mark "CHARLESTON CHILD" for the sale
of retail products and has been threatened with litigation by Registrant.

4. The grounds for cancellation are as follows:

03/16/2005 SWILSDH1 00000055 76431064
01 FC:6401 300.00 OP
03/17/2005 SWILSDH1 00000004 2790535
01 FC:6401 300.00 OP

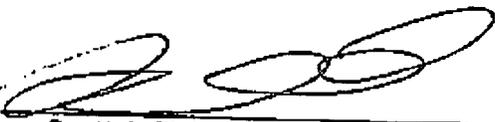


03-07-2005

- a. On information and belief, Registrants, Iluminada Patio Hunter and Ronald Lewis Hunter have abandoned the mark.
- b. On information and belief, Respondents have never used the mark in commerce in connection with the sale of clothing, namely, colored dresses, blouses, tops, shirts, pants, shorts, scarves, gloves and hats.
- c. On information and belief, the registration was fraudulently procured. On information and belief, the mark was knowingly procured with the knowledge that the mark was not used in commerce.

For the foregoing grounds, Petitioner requests that U.S. Registration No. 2,790,535 be cancelled.

Respectfully submitted,

By: 

Scott J. Fields, Esquire
Attorney for Petitioner,
CHARLESTON CHILD, LLC

Dated: 3/4/05

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

In the matter of trademark Registration No.: **2,790,535**

For the mark: **A CHARLESTON CHILD**
Date Registered: **December 9, 2003**

CHARLESTON CHILD, LLC

v.

**ILUMINADA PATIO HUNTER and
RONALD LEWIS HUNTER**

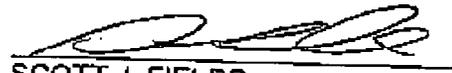
CERTIFICATE OF MAIL

MAIL STOP TTAB/FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Date of Deposit: 3/4/05

I hereby certify that this Petition for Cancellation is being deposited with the United States Postal Service via First Class Mail on the date indicated above and is addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia, 22313-1451, Mail Stop TTAB/FEE.

Date: 3/2/04


SCOTT J. FIELDS

NATIONAL IP RIGHTS CENTER, LLC
550 Township Line Road, Suite 400
Blue Bell, PA 19422
(610) 680-2301 - Phone
(610) 680-2319 - Fax

TRADEMARK/SERVICE MARK

Attorney Docket No. 11563-1

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

In the matter of trademark Registration No.: ^{Serial No: 76431064} 2,790,535

For the mark: A CHARLESTON CHILD
Date Registered: December 9, 2003

CHARLESTON CHILD, LLC

v.

ILUMINADA PATIO HUNTER and
RONALD LEWIS HUNTER

TRANSMITTAL LETTER

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
MAIL STOP TTAB/FEE

Dear Sir/Madam:

Applicant submits herewith the following documents for filing:

1. Petition for Cancellation;
2. A check in the amount of \$300.00 is enclosed herewith to cover the Petition filing fees;
3. Certificate of Mailing.

The Commissioner is hereby authorized to charge any shortfall which may be required, or credit any overpayment to Deposit Account No. 50-2894. A duplicate copy of this sheet is enclosed for accounting purposes.

Respectfully submitted,

By: 
Scott J. Fields, Esquire
Attorney for Applicant
Charleston Child, LLC



03-07-2005

U.S. Patent & Tm/Oft/TM Mail Rept Dt. #05

Dated: 3/4/05

UNITED STATES PATENT AND TRADEM/
OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 18, 2005

Hunter, Iluminada Patio

10 Lavington Road
Charleston, SC 29407

Cancellation No. 92044330
Reg. No. 2790535

Scott J. Fields
NATIONAL IP RIGHTS CENTER, LLC
550 Township Line Road, Suite 400
Blue Bell, PA 19422

Charleston Child, LLC

v.

Hunter, Iluminada Patio

Helen Johnson, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12,

2003). Notices concerning the rules changes, as well as the Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open:	April 07, 2005
Discovery period to close:	October 04, 2005
30-day testimony period for party in position of plaintiff to close:	January 02, 2006
30-day testimony period for party in position of defendant to close:	March 03, 2006
15-day rebuttal testimony period for plaintiff to close:	April 17, 2006

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the

Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,790,535

Registered Dec. 9, 2003

**TRADEMARK
PRINCIPAL REGISTER**

A CHARLESTON CHILD

HUNTER, ILLUMINADA PATIO (UNITED STATES INDIVIDUAL)
10 LAVINGTON ROAD
CHARLESTON, SC 29407 AND
HUNTER, RONALD LEWIS (UNITED STATES INDIVIDUAL)
10 LAVINGTON ROAD
CHARLESTON, SC 29407

SCARVES, GLOVES, HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 9-1-1986; IN COMMERCE 9-1-1986.

SEC. 2(F).

SER. NO. 76-431,064, FILED 7-16-2002.

ALICE SUE CARRUTTERS, EXAMINING ATTORNEY

FOR: CLOTHING, NAMELY, COLORED DRESSES, BLOUSES, TOPS, SHIRTS, PANTS, SHORTS,



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

Charleston Child, LLC)	
)	
Petitioner,)	
)	
)	Cancellation No. 92004430
v.)	
)	
ILUMINADA PATIO HUNTER and)	
RONALD LEWIS HUNTER)	
)	
Respondent.)	

ANSWER TO PETITION FOR CANCELLATION

COMES NOW, ILLUMINADA PATIO HUNTER and RONALD LEWIS HUNTER (“the HUNTERS”) for their Answer to the Petition for Cancellation of Charleston Child, LLC. (“Petitioner”) state as follows:

In response to the numbered allegations of the Petition, the HUNTERS state as follows:

1. The HUNTERS admit that Illuminada Patio Hunter and Ronald Lewis Hunter are the owners of Registration No. 22,790,535 for A CHARLESTON CHILD for “clothing, namely colored dresses, blouses, tops, shirts, pants, shorts, scarves, gloves, and hats” and issued December 9, 2003, and have an address of 10 Lavington Road, Charleston, SC 29407.

2. In response to the second paragraph of the Petition for Cancellation (the “Petition”), the HUNTERS deny that Petitioner is and will be damaged by continued registration of the HUNTERS’ A CHARLESTON CHILD, Registration No.

2,790,535, respectively (the "Registration"), for "clothing, namely colored dresses, blouses, tops, shirts, pants, shorts, scarves, gloves, and hats"; and acknowledge that Petitioner has filed a petition for the intention of canceling the Registration.

3. On January 19, 2005, the HUNTERS notified Ms. Kendra L. Coleman of their exclusive rights in A CHARLESTON CHILD, Reg. No. 2,790,535. The HUNTERS are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph, and therefore deny such allegations.

4a. Denied

4b. Denied.

4c. Denied.

The HUNTERS deny each and every remaining allegation of the Petition not specifically admitted herein.

WHEREFORE, the HUNTERS pray that this Petition be dismissed, that Petitioner take nothing for this action and for such other, and further relief as may be just and proper.

Respectfully Submitted,

Anthony B. Askew
Christopher J. Chan

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (main)
(404) 815-6555 (fax)

Attorneys for Respondent

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

Charleston Child, LLC)
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 Petitioner,)
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) Cancellation No. 92004430
 v.)
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 ILUMINADA PATIO HUNTER and)
 RONALD LEWIS HUNTER,)
 Respondents.)

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing ANSWER TO PETITION FOR CANCELLATION on counsel for Petitioner by placing a true and correct copy of same in the First Class U.S. Mail with proper postage affixed and addressed to:

Scott J. Fields
National IP Rights Center, LLC
550 Township Line Road, Suite 400
Blue Bell, PA 19422

This 27th day of April, 2005.

Respectfully Submitted,

Christopher J. Chan

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (main)
(404) 815-6555 (fax)

Attorneys for Respondents

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MAIL STOP TTAB/FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Date of Deposit: **27 April 2005**

I hereby certify that this ANSWER TO PETITION FOR CANCELLATION is being deposited with the United States Postal Service via First Class Mail on the date indicated above and is addressed to MAIL STOP TTAB/FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Christopher J. Chan

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Attorneys for Respondents



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 Respondents.)

AMENDED ANSWER TO PETITION FOR CANCELLATION

COMES NOW, ILLUMINADA PATIO HUNTER and RONALD LEWIS
HUNTER (“the HUNTERS”) for their Amended Answer to the Petition for
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follows:

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Hunter are the owners of Registration No. 2,790,535 for A CHARLESTON CHILD
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AMENDED ANSWER TO PETITION FOR CANCELLATION

Mailing Date: 8 August 2005

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4a. Denied

4b. Denied.

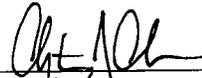
4c. Denied.

The HUNTERS deny each and every remaining allegation of the Petition not specifically admitted herein.

WHEREFORE, the HUNTERS pray that this Petition be dismissed, that Petitioner take nothing for this action and for such other, and further relief as may be just and proper.

This 8th day of August, 2005.

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Attorneys for Respondent

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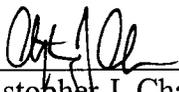
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Scott J. Fields
National IP Rights Center, LLC
550 Township Line Road, Suite 400
Blue Bell, PA 19422

This 8th day of August, 2005.

Respectfully Submitted,



 Christopher J. Chan
 KILPATRICK STOCKTON LLP
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Date of Deposit: **8 August 2005**

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