

LEGAL CONSEQUENCES OF REGISTERING A TRADEMARK UNDER A PERSONAL NAME IN A LIMITED LIABILITY COMPANY

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Abstract

Problems with the application of law in society are indicated by the existence of the GOOD DAY trademark dispute between PT Santos Jaya Abadi and Soedomo Mergonoto as the director of PT Santos. In the GOOD DAY brand dispute, the judge handed down a decision to reject the plaintiff entirely at first instance and cassation. The aim of the study was to analyze the judge's considerations in the decision Number 722 K/Pdt.Sus-HKI/2015 and the legal consequences arising from registering a mark with an individual's name for legal entities in a limited liability company. In conducting research, using normative juridical research methods, because normative juridical focuses on legislation and literature that is relevant to the case under study. The data analysis method used is qualitative analysis. The results of the study show that the verdict handed down by the judge in decision Number 722 K/Pdt.Sus-HKI/2015 is contrary to the principle of separation of assets, especially contained in Law Number 40 of 2007 concerning Limited Liability Companies. The defendant, namely Soedomo Mergonoto, in registering the GOOD DAY brand which had been developed and promoted with funds from PT Santos Jaya Abadi under the personal name of the directors, the actions of the directors showed bad faith. The legal consequence is that there is an exclusive right attached to Soedomo Mergonoto due to trademark registration, while PT Santos Jaya Abadi does not have exclusive trademark rights.

Keywords: Brand Rights, Limited Liability Company, Directors

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Citation in APA style: Kurniawati, A., & Wahyudi, E. (2023). Legal Consequences Of Registering A Trademark Under A Personal Name In A Limited Liability Company. *JOSAR (Journal of Students Academic Research)*, 8(2), 281-293

Received:
August, 29th 2023

Revised:
September, 15th 2023

Published:
September, 25th 2023

DOI: <https://doi.org/10.35457/josar.v8i1.2742>

1. INTRODUCTION

Law is important, namely to regulate and maintain the flow of activities in a country so that it runs in an orderly manner and in accordance with norms. Legal examples regulate the flow of activities of a country, as evidenced by Law Number 40 of 2007 concerning Limited Liability Companies (UU PT) and Law Number 20 of 2016 concerning Marks and Geographical Indications (UU MIG). In Law Number 40 of 2007, it has explained in detail regarding the limited liability company law, especially in Article 3 regarding the separation of assets and the article on the authority of the directors in carrying out company management duties. In Article 97 of the Company Law, it has been discussed in the contents of the article, if the directors in managing the company must be based on good faith and the directors must be responsible. In carrying out the duties of managing the company, the Board of Directors also adheres to the principle of trust or fiduciary duties. In Law Number 20 of 2016 concerning Trademarks and Geographical Indications it also regulates trademark rights and protection of trademark rights.

In society, there are still cases that are contrary to the law. In the laws and regulations, especially Law Number 40 of 2007 concerning Limited Liability Companies, it has been explained that the directors carry out their duties and manage the company. must be responsible and have good faith, and must prioritize the interests of the company, but in reality on the ground, there are Directors who carry out management in bad faith and not in accordance with Law Number 40 of 2007 concerning Limited Liability Companies. An example is the trademark dispute between PT Santos Jaya Abadi and Soedomo Mergonoto, the director of PT Santos Jaya Abadi. The dispute over the GOOD DAY brand began with a lawsuit by the plaintiff, namely PT Santos Jaya Abadi at the Surabaya Commercial Court with case number 08/HKI.MERREK/2014/PN.NIAGA.SBY. The plaintiff filed a lawsuit with the Surabaya District Court on November 19, 2014 because the plaintiff felt that the GOOD DAY trademark was registered on behalf of the defendant as the directors of PT Santos Jaya Abadi. The registration was based on bad faith and the plaintiff felt that the GOOD DAY mark should be registered. on behalf of the company. The plaintiff, namely PT Santos Jaya Abadi, does not accept that the GOOD DAY brand that has been developed and promoted with company funds is not funded by the Board of Directors, but is registered individually under the personal name of the Board of Directors. (Putusan Nomor Perkara, 2014)

The Surabaya Commercial Court judge rejected the plaintiff's claim, with the consideration that the Board of Directors had carried out its management duties in good faith, and there was no loss received by the plaintiff. The judge also explained that registering a mark with the individual's name or the personal name of the directors is also a form of the Directors' duties as a representative of the company. The judge explained that there was no loss to the

plaintiff, namely PT Santos Jaya Abadi. The plaintiff felt unacceptable, so he filed an appeal on May 18 2015. The appeal filed by the plaintiff, namely PT Santos Jaya Abadi, was also rejected by the judge at the cassation level, on the basis of the consideration that the *judex facti* decision was correct, and the decision at the first level was in accordance with statutory regulations.

The description above is the reason for the author to raise this case with the title "LEGAL CONSEQUENCES OF REGISTRATION OF A BRAND WITH A PERSONAL NAME IN A LIMITED COMPANY"

2. METHODS

The type of research used to conduct research on legal cases raised by the author is normative juridical, because normative juridical is a legal writing methodology that focuses on literature and laws and regulations, which are relevant to the legal issues studied by the author. While the data analysis method used by the author in conducting research is a qualitative analysis method. The data used in conducting research uses secondary data, and uses 3 (three) types of legal materials, namely:

1. Primary, which includes relevant laws and regulations, as well as several decisions related to cases raised by the authors, namely Decision Number 08/HKI.MEREK/2014/PN.NIAGA.SB and Decision of the Supreme Court Number 722 K/Pdt. Sus-HKI/2015.
2. Secondary, includes some literature such as journals, scientific articles and theses on intellectual property rights, especially on brand rights, limited liability companies, and limited liability company organs.
3. Tertiary, including Indonesian language dictionaries and encyclopedias

3. RESULTS AND DISCUSSION

A. GOOD DAY Trademark Dispute Position Case

The case of the GOOD DAY brand rights dispute case, namely the first was the filing of a lawsuit filed by PT Santos Jaya Abadi to the Surabaya Commercial Court with case number 08/HKI.MEREK/2014/PN.NIAGA.SBY. There are several parties to the GOOD DAY trademark dispute:

1. PT Santos Jaya Abadi as the plaintiff.
2. Soedomo Mergonoto as the defendant.
3. Directorate General of Intellectual Property Rights as co-defendant.

PT Santos Jaya Abadi sued Soedomo Mergonoto who is a director of PT Santos Jaya Abadi for several reasons, namely:

1. Limited Liability Company Santos Jaya Abadi, which is represented by several shareholders, which has the legal standing of filing a lawsuit.
2. Soedomo Mergonoto, who is a director of PT Santos Jaya Abadi, registered the class 30 GOOD DAY brand with registration extension number IDM000263030 in bad faith, because he had registered the GOOD DAY brand with the director's personal name that had been developed by PT Santos Jaya Abadi.
3. Soedomo Mergonoto has a conflict of interest, thus violating Article 99 of Law Number 40 of 2007 concerning Limited Liability Companies (UU PT)

Due to the defendant's actions described by the plaintiff, the plaintiff filed for the cancellation of the GOOD DAY brand on behalf of the defendant. In the trial process for case number 08/HKI.MEREK/2014/PN.NIAGA.SBY, there were several witnesses presented by both parties, namely the plaintiff and the defendant. There are statements of several witnesses presented at trial, namely:

1. Henry Sulistyo Budi, explained that the mark can be transferred to another party on the condition that there must be an agreement between the parties, and related to mark registration. The expert also explained that the party carrying out the registration of the mark, can be carried out by the party personally or as a legal entity, if the legal entity submitting the registration of the mark then the one entitled to register the mark is the legal entity or it depends on the articles of association (AD) of the legal entity and the mark owner. is the name listed in the general register of the mark.
2. Agus Widy Antoro, explained that the legality of ownership of a brand right is not in the name of the company, so it cannot be if the brand is believed or considered as an asset belonging to the company.
3. Soemardi Partoredjo, explained that the application for registration of a mark in the name of a company is not in the name of a legal entity if the mark registration is carried out or submitted by another party or shareholder

The judge at the Surabaya Commercial Court gave a verdict, namely rejecting the plaintiff's claim in its entirety.

After the decision was rejected by the plaintiff, the plaintiff filed a cassation with case number 722 K/Pdt.Sus-HKI/2015. The plaintiff in filing an appeal for cassation, also raised several objections, which are described as follows:

1. The *judex facti* judge was not careful and thorough in handling cases at the first level, and the judge misapplied the law related to bad faith in the actions of the

directors, because Soedomo Mergonoto as the company's director had registered the GOOD DAY brand using the director's personal name, namely Soedomo Mergonoto .

2. The judge confirmed that there was legal standing for the plaintiff, the judge should have understood the existence of a conflict of interest between the two parties, namely between a Limited Liability Company, namely PT Santos Jaya Abadi, and the Board of Directors, namely Soedomo Mergonoto.
3. The judge was not careful in considering the existence of a sense of business
4. The judge was wrong in assessing whether there was any loss to the plaintiff by only looking at the statement of one of the witnesses who gave the statement "don't know", which the judge then saw as a form of no loss to the plaintiff for the act of registering the GOOD DAY brand by the defendant.
5. *Judex facti* judges did not carry out their duties professionally.

At the cassation level, the judge issued a ruling that rejected the plaintiff's cassation request in its entirety. The judge's considerations at the cassation level, namely:

1. The objection raised by Santos Jaya Abadi LIMITED COMPANY was not justified by the judge, because the GOOD DAY mark had been registered by the defendant under the defendant's personal name, namely Soedomo Mergonoto since 1990, so he is 24 years old.
2. The decision at the first level, namely 08/HKI.MERREK/2014/PN.NIAGA.SBY, according to the judge there was no problem and the decision at the first level was in accordance with the applicable laws and regulations. The judge also stated that the decision was not against the law.

B. Analysis of Judge Considerations Decision Number 722 K/Pdt.Sus-HKI/2015

The definition of a limited liability company has been stated in Article number 1 of Law Number 40 of 2007 concerning Limited Liability Companies, which are legal entities of partnerships established based on agreements, which carry out certain business activities and have authorized capital divided into shares. (Arini, 2021) argues that there are 5 characteristics of a Limited Liability Company, namely:

- a. Legal entity, the sentence legal entity means that the definition of a limited liability company (PT) is an entity that meets the requirements, which means that the body can be a supporter of rights and supporters, and a limited liability company also has its own assets and there is a separation with assets. company management.

- b. Capital partnership, which means that the Limited Liability Company has Unauthorized Capital, namely the amount of capital described in the deed of incorporation of the Company, and the authorized capital is divided into shares.
- c. There is an agreement. A company can be formed with a minimum of 2 (people) who agree to establish a company. Regarding the agreement on the establishment of a company, it must be stated in the Articles of Association made in front of an authorized official, namely a Notary.
- d. Authorized capital. The limited liability company is obliged to have authorized capital which is the company's assets and the company's assets must be separated from the assets of the limited liability company shareholders
- e. The existence of business activities, the company must carry out business activities in certain fields.

(Sjawie & SH, 2017) argues that a limited liability company also has a position as a legal person. There are several consequences of a Limited Liability Company as a legal person, namely:

- a. The company carries out its rights and obligations, and has assets in the name of the company itself
- b. There is a separate company interest from the interests of the company's shareholders

There is a description regarding the principle of separation of assets attached to a limited liability company, so it can be concluded that since a limited liability company has legally become a legal entity, the limited liability company must carry out its business activities based on the principle of separation of assets. Article 3 paragraph (1) and (2) of the Company Law, explains in the contents of article paragraph 3, that the shareholders in the company do not have personal responsibility for an agreement made on behalf of the company as long as the company still does not meet the requirements as legal entity. Followed by the next article, namely Article 14 of the Company Law, explaining that legal actions will not bind the Company, as long as the Company has not legally become a legal entity, so that the responsibility is borne personally by the founder by the company.(Sari, Sholihah, & Kusuma, 2022)

To find out that PT Santos Jaya Abadi is a legal entity, it has been explained regarding the ratification of a legal entity for a limited liability company in the Regulation of the Minister of Law and Human Rights Number M.HH-01.AH.01.01, which explains several steps related to legalizing a legal entity, namely :

- a. Applications for legal entity authorization are submitted to the Minister through the Legal Entity Administration System, namely by filling out the establishment form, but the applicant must first submit an application for the use of the applicant's Company name.
- b. Submission of an application for the use of the applicant's Company name that has been approved by the Minister, then the applicant pays an approval fee for the use of the Company name. Followed by the stage of filling out the Form of Establishment by the applicant, with a deadline of 60 days from the date the use of the applicant's Company name is approved by the Minister.
- c. The applicant must submit an application letter accompanied by supporting documents, which are described as follows:
 - 1) Original proof of fee payment, in order for the applicant to obtain approval for the name of the company belonging to the applicant and decisions related to the validation of the company as a legal entity as well as an announcement in the Supplement to the State Gazette of the Republic of Indonesia (BNRI)
 - 2) The applicant attaches a photocopy of proof of the Company's paid-up capital belonging to the applicant.
 - 3) A statement regarding the full address of the company owned by the applicant from the building manager or signed by all members of the Board of Directors together with all founders and all members of the Board of Commissioners.
 - 4) The deed of amalgamation which the notary recognizes as the original, in the event that the company is made for the purpose of amalgamation
 - 5) Copies of the deed of establishment of the Company and a summary of the deed of establishment is also attached

If it has been fulfilled then within 14 days. The Minister or Officer issues a decree on legalizing the company's legal entity.

Referring to the several provisions of the laws and regulations above, PT Santos Jaya Abadi has legally become a legal entity, as evidenced in the decision on the dispute over the GOOD DAY brand rights at the first level, with several things, namely

1. There is deed No. 23 dated 18 May 1979 which was drawn up before notary Eugenie Gandaredja, SH. About PT Santos Jaya Coffee Company and Deed Number April 30, 1980

2. Announcement of the State Gazette of the Republic of Indonesia Number 918 of 1989.

So, PT Santos Jaya Abadi should apply the principle of separation of wealth, and the limited liability company organs, especially the Directors, do not have personal responsibility for the Company's assets.

In Article 1 number 5 of the Company Law, it has been explained that the Board of Directors is one of the company's organs that bears full responsibility for managing the company for the company's goals. The duties of the Board of Directors are also explained in the contents of Article 97 Paragraph (1) and (2) of the Limited Liability Company Law which explains in detail, that the Board of Directors of a company in carrying out the duties of the company must be carried out in good faith, and the directors must also carry out their duties with full responsibility. The discussion regarding the Board of Directors is of course also attached to the principle of Fiduciary Duties.

(Yusuf, 2020) argues that fiduciary duties are one of the principles of directors in a Limited Liability Company, which means that the directors hold a trust for the benefit of others, including and based on skill, prudence and diligence and based on statutory provisions, and fiduciary duties are closely related to standards of conduct. (Yusuf, 2020) argues that the obligations of directors in carrying out management must be based on several things, namely the duty of care and duty of loyalty, which are described as follows, namely:

1. Duty of loyalty: In carrying out their duties, the Board of Directors may not use wealth or funds from the company for personal gain. The Board of Directors also has an obligation to maintain all valuable secrets for the company
2. Duty of care: The Directors in managing the company must be careful and not negligent.

In Article 5 of Law 15 of 2001 which is now repealed and replaced with Article 20 of Law Number 20 of 2016, that marks cannot be registered if they are contrary to laws and regulations. (Rastuti, 2015) argues that there are several aspects of good faith on the board of directors in carrying out a company task, namely:

1. Directors in carrying out their duties to manage the company, must be loyal to the company, and directors do not use limited liability company assets for the personal interests of the directors.
2. The Board of Directors is obliged to comply with laws and regulations
3. The Board of Directors has an obligation to avoid any conflict of interest between the company and the directors personally
4. The Board of Directors must be trustworthy and always be honest

5. The Board of Directors is obliged to carry out management for proper and reasonable purposes
6. The directors commit a negligence, the directors are personally fully responsible

Muhammad Amar Abdillah (2021:18) argues that based on court decisions regarding trademark rights and laws, there are two elements that can make a party commit bad faith, namely:

1. There is an advantage or benefit, from the registration of a mark that has been carried out.
2. There is a result of the trademark registration that has been carried out, namely that there is a loss received by another party

Referring to laws and regulations as well as various literature. The actions of the defendant as the director, namely Soedomo Mergonoto, in registering the GOOD DAY trademark using a personal name was an act of bad faith. In article 1 number 5 of the Limited Liability Company Law, it has been explained that the Board of Directors is one of the company's organs that bears full responsibility for managing the company for the company's goals. Should a director who has a large burden of responsibility in the management of the company must be more careful and thorough in taking an action. The Defendant as the Board of Directors of PT Santos Jaya Abadi in carrying out the management, should have carried out his duties in accordance with Article 92 of the Company Law, which stipulates that a Director carries out the management of the company for the purposes and interests of the company not personally. The defendant's action in registering the GOOD DAY brand with a personal name, is an action that is not in accordance with Law Number 40 of 2007 concerning Limited Liability Companies and is not in accordance with the principles of fiduciary duties as a party holding a trust. The actions of the defendant as the Board of Directors of PT Santos Jaya Abadi in registering the GOOD DAY brand which had been developed and promoted with funds from the company, should have been registered under the name of the Company and not under the personal names of the Directors. (Indah & Indrawati, 2022) argue that a brand is also an important thing, namely as a valuable asset for the company, and the brand can have a function as the identity of an item or service that describes the quality of the goods or service, and of course it is very important. for marketing activities to consumers.

The existence of a judge's decision in favor of the defendant, namely Soedomo Mergonoto as a director of PT Santos Jaya Abadi, contradicts Article 3 of Law Number 40 of 2007 concerning Limited Liability Companies which applies the principle of separation of wealth. A judge should have a goal to uphold justice and truth. (Djojarahardjo, 2019) argues

that judges must issue decisions that reflect the existence of benefits, justice and legal certainty so that the judiciary becomes a place to protect the hopes of justice seekers, which is the big responsibility of the judge.

The GOOD DAY brand decision does not fulfill the principles of justice and legal certainty. Supposedly PT Santos Jaya Abadi as the company that financed the production, marketing and development activities of the GOOD DAY brand had the trademark rights, but the judge ruled in favor of the defendant as the Board of Directors who had obtained the GOOD DAY brand rights to become private ownership of the Directors and not PT Santos Jaya Abadi. Legal certainty was also not achieved in the decision, because the Judge should have understood the principle of separation of wealth in Law Number 40 of 2007 concerning Limited Liability Companies, as well as the consequences of a limited liability company as a legal person who should have wealth in his own name and there is a separation of interests between the company and shareholders, so that a decision handed down by a judge and having a ruling in favor of the defendant is contrary to the principle of separation of wealth.

C. Legal Consequences of Registering a Mark with a Private Name in a Limited Liability Company

(Abdurahman, 2020) argues that it is necessary to know in advance that trademark registration in Indonesia applies the first to file principle. The principle of first to file in trademark registration means that the party that first registers the mark and obtains the trademark certificate, then that party is entitled to the mark, and other parties are prohibited from registering a mark with the same name. Trademarks are regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UU MIG). Article 1 point 1 of the MIG Law explains the definition of a mark, which is a mark that can be displayed graphically to distinguish goods and/or services produced by individuals or legal entities in trading activities of goods and/or services. Article 1 point 5 of the MIG Law explains the meaning of trademark rights, namely rights that are exclusive in nature and these rights are given to owners of registered marks to use their marks or to give permission to other parties to use their marks. Article 3 jo. Article 35 of the MIG Law explains that the holder of the exclusive rights to a trademark is the party that registers the mark officially, and the mark is protected by the state for a period of 10 (ten) years. Parties who can apply for registration of marks, as regulated in Article 1 point 5 of Regulation of the Minister of Law and Human Rights Number 67 of 2016 Concerning Mark Registration (hereinafter referred to as Permenkumham Number 67 of 2016) can be submitted by legal entities or individuals.

There are several stages in trademark registration which have been described in detail in Permenkumham Number 67 of 2016, namely:

1. Applications can be made electronically or electronically
2. Fill out the form and attach several documents
3. There is an announcement
4. There is a rebuttal or rebuttal if there is an objection
5. Substantive Examination

The GOOD DAY brand which has been registered with the DJKI with class number 30 with registration extension number IDM000263030, proves that the GOOD DAY brand has been registered by the defendant, namely Soedomo Mergonoto contained in Permenkumham Number 67 of 2016. So, the GOOD DAY brand in the name of Soedomo Mergonoto is legal. become a trademark that has been registered in Indonesia. Since Soedomo Mergonoto is the legal owner of the GOOD DAY brand, Soedomo Mergonoto also holds the monopoly right on the GOOD DAY brand. (Nabilah, Sudjana, & Rafianti, 2018) argue that the monopoly right attached to the owner of a registered mark is the economic right of the brand, with monopoly rights, the brand owner has the right to prohibit other parties from using their mark. without permission.

The legal consequences of the party registering the mark are obtaining exclusive rights as stated in Article 3 of Law Number 20 of 2016 Concerning Marks and Geographical Indications, and obtaining legal protection for 10 (ten) years in accordance with Article 35 of the MIG Law. There are exclusive rights attached to the brand owner, so the owner of the brand rights can also carry out the transfer of trademark rights and license agreements in accordance with Articles 41 and 42 of the MIG Law. In addition, the state also provides legal protection to registered mark owners, so that if another party uses the mark without permission, the brand owner can take several steps, namely:

1. Civil route, if there are parties who use the mark without the permission of the trademark rights holder which contains elements similar in principle or in its entirety, then the brand owner can file a lawsuit to terminate all activities or actions related to the mark used without permission and can submit a claim for compensation. The lawsuit filed by the applicant can be filed at the Commercial Court, whose jurisdiction includes the place of residence or position of the defendant. If one of the parties to the trademark dispute resides abroad, the applicant will file a lawsuit at the Central Jakarta Commercial Court.

2. The criminal route, registered mark owners who feel their rights have been violated, can report to investigators from the Indonesian National Police, who can then carry out another process, namely examination.

With the inclusion of the owner's name on the GOOD DAY brand certificate in the name of Soedomo Mergonoto as the defendant, PT Santos Jaya Abadi as the plaintiff who developed and promoted products with the GOOD DAY brand with full facilities and funds from PT Santos Jaya Abadi, did not get the trademark rights from GOOD DAY. PT Santos Jaya Abadi also did not obtain exclusive rights or monopoly rights for the GOOD DAY brand, because the name of the owner of the GOOD DAY brand is still registered in the name of Soedomo Mergonoto as the defendant, and no transfer of rights has been made. PT Santos Jaya Abadi cannot transfer rights and license the GOOD DAY brand, because PT Santos Jaya Abadi is not listed as the owner of the registered mark at DJKI.

The Directorate General of Intellectual Property (DJKI) has several important obligations as dissemination, regulator, administrator, law enforcement, which leads to the commercialization of intellectual property, and plays an active role in ensuring protection and legal certainty in the field of intellectual property in Indonesia. If a mark has been registered and has fulfilled several stages of mark registration as stipulated by laws and regulations, the Directorate General of Intellectual Property is obliged to issue a registered mark certificate, in order to provide legal certainty to the mark owner. (Biro Humas, 2019)

4. CONCLUSION

1. The judge's decision to reject the plaintiff in the GOOD DAY trademark dispute number 722 K/Pdt.Sus-HKI/2015 contradicts Law Number 40 of 2007 concerning Limited Liability Companies, particularly in article 3 regarding the principle of separation of assets. The judge was not careful in applying the principle of bad faith to the directors. The defendant, namely Soedomo Mergonoto as the Board of Directors of PT Santos Jaya Abadi, in carrying out his duties in managing the company was not in accordance with Article 92 of Law Number 40 of 2007 concerning Limited Liability Companies and did not apply fiduciary duties.
2. The legal consequence arising from registering a mark with an individual name for a legal entity is the existence of exclusive rights attached to the owner of the mark whose name is listed on the mark certificate. Thus, Soedomo Mergonoto has exclusive rights or monopoly rights, while PT Santos Jaya Abadi does not have GOOD DAY trademark rights. The Directorate General of Intellectual Property Rights has an

obligation to registered owners to issue brand certificates to provide legal certainty to brand owners.

ACKNOWLEDGEMENTS

This thesis was successfully completed with the help and guidance of several parties. The author would like to thank Eko Wahyudi, S.H, M.H as the author's supervisor and head of the East Java "Veteran" National Development University Law Faculty study program who provided advice and direction to the author during the research process and thesis preparation, as well as the author's parents and friends. who provide assistance in the form of motivation and prayer which is very important for the author.

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