

Consumer Protection against *Upselling* Practices in Food Product Marketing Strategies

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ABSTRACT

In the marketing industry, sales strategies are essential to increase the number of product sales. Business actors use various sales strategies to ensure that their goods sell quickly in the market and in demand, making customers tempted. The transaction process that occurs in the relationship between business actors and consumers continues to develop, which has an impact on changes in the legal construction that occurs in the relationship between business actors and consumers. The practice of upselling, which is often used by business actors in the food industry, can potentially harm consumers if it lacks transparency and clear consent. Therefore, efforts to provide protection to consumers are important in this era of free trade. This study aims to assess the extent to which upselling practices comply with existing regulations, as well as provide recommendations to regulators and stakeholders regarding consumer protection and the development of stricter regulations or ethical guidelines. The research method used is normative and legal, using secondary data sources and based on primary law. The findings show that although upselling is allowed, business actors must provide accurate information to consumers. This research concludes that there is a need for stricter law enforcement and increased awareness of businesses and consumers about their rights and obligations to prevent harmful practices.

Keywords: consumer protection, legal remedies, upselling

ABSTRAK

Dalam industri pemasaran, strategi penjualan sangat penting untuk meningkatkan jumlah penjualan produk. Pelaku usaha menggunakan berbagai strategi penjualan untuk memastikan bahwa barang yang mereka jual cepat habis dipasaran dan diminati, membuat pelanggan tergiur. Proses transaksi yang terjadi dalam hubungan antara pelaku usaha dan konsumen terus berkembang, yang berdampak pada perubahan konstruksi hukum yang terjadi dalam hubungan antara pelaku usaha dan konsumen. Adapun praktik *upselling* yang sering digunakan oleh pelaku usaha dalam industri makanan yang dapat berpotensi merugikan konsumen apabila tidak dilakukan dengan transparansi dan persetujuan yang jelas. Oleh karena itu, upaya untuk memberikan perlindungan kepada konsumen merupakan suatu hal yang penting di era perdagangan yang bebas ini. Penelitian ini bertujuan untuk menilai sejauh mana kepatuhan praktik *upselling* terhadap regulasi yang ada, serta memberikan rekomendasi kepada regulator dan pemangku kepentingan terkait perlindungan konsumen dan pengembangan regulasi atau pedoman etika yang lebih ketat. Metode penelitian yang digunakan adalah normatif dan hukum, menggunakan sumber data sekunder dan berdasarkan hukum primer. Temuan menunjukkan bahwa meskipun *up selling* diperbolehkan, pelaku usaha harus memberikan informasi yang akurat kepada konsumen. Penelitian ini menyimpulkan perlunya penegakan hukum yang lebih ketat dan peningkatan kesadaran pelaku usaha serta konsumen tentang hak dan kewajiban untuk mencegah praktik yang merugikan.

Kata Kunci: perlindungan konsumen, *upselling*, upaya hukum

Introduction

Consumer protection has become an essential aspect of buying and selling activities. The purpose of this business activity is to ensure that the rights and obligations between business actors and consumers are balanced. Consumer protection is seen as materially and formally

increasingly important, considering the rapid development of technology and science, which serves as the foundation for business actors to be able to produce goods and/ or services aimed at achieving business goals more efficiently and effectively, both directly and indirectly, where consumers will feel all the impacts. When a consumer wishes to buy something at a restaurant to fulfill his/her needs, there will be a transaction between the business actor and the consumer. According to applicable law, consumers are required to pay for the food ordered, while the restaurant manager as a business actor will fulfill the request (Subekti, 2004).

This condition gives consumers the freedom to choose various types of goods and quality of goods or services according to their wishes, which can satisfy the position of consumers regarding the goods or services they want and features are increasingly wide open. However, due to these conditions and realities, business actors' and consumers' positions may become out of balance., the position of consumers is often in a weak position. Practices such as excessive promotion or unbalanced contract clauses are circumstances that almost certainly always exist in every type and field of business transactions. Consumers are often unaware of their rights and can be easily deceived by producers who market their products dishonestly. The main factor behind consumer weakness is the low level of awareness of their rights and business actors are subject to company activities through product promotion and advertising to achieve maximum profits. This is due to consumers' lack of knowledge about their rights.

Therefore, given the complexity of consumer protection issues in the era of free trade, efforts to protect consumer interests are an important and urgent issue that needs immediate attention. Consumer protection is an integral part of sound business operations. Business activity is a mutually necessary relationship between economic actors and consumers. Basically, to ensure and maintain a balanced position between consumers and business actors, regulations are needed that can provide legal protection to consumers. In a healthy business activity, there is a balance of legal protection between consumers, business actors, and the government. The absence of balanced legal protection can put consumers in a vulnerable position.

Consumer protection laws are currently receiving a lot of attention because they are related to regulations for the benefit of society. Not only the public as consumers are entitled to protection, but also entrepreneurs who have their own rights and obligations. The role of the government is to regulate, supervise, and control to create a system that fosters interaction so that the goal of broader public welfare can be achieved. In the marketing industry, sales strategies are very important in order to increase the number of products sold. The marketing strategy allows companies to convey detailed information to consumers about product advantages and help companies face competition. One of the marketing strategies used is upselling, which is an approach to convince customers to buy similar products with higher specifications and features (Martialis, 2017).

While upselling can be profitable for businesses, the potential risks and disadvantages for consumers must also be considered. If consumers do not carefully assess the goods and services they want before buying them, then they will not realize that the goods and services they receive may be exploited by economic actors who do not uphold morals and ethics in transactions. It is very likely that this will suffer one-sided losses. Consumers will be burdened with unwanted cost increases or feel forced to make additional unnecessary purchases. Issues of dishonest or less-than-transparent upselling offers may constitute a form of fraud. Consumers may not get adequate or clear information about the benefits and additional costs associated with the products or services offered through upselling promotions (Amalia Salsabila, Ahmad Syaifudin, 2024). The practice of upselling harms consumers by increasing unreasonable costs and consumers feel forced to buy additional products or features that are not actually needed. Negative experiences with upselling can influence consumers' future purchasing decisions. They may be more skeptical of sales offers and more cautious when making purchasing decisions.

To ensure the implementation of consumer protection, the government formulates such protection in the form of legal products. This is very important because only the law can force business actors to comply with existing regulations, as well as provide strict sanctions. Consumer protection includes various efforts that ensure legal certainty to protect consumers (Rahman, 2018). Upselling, which is regulated in Law Number 8 of 1999 Concerning Consumer Protection (Law Number 8/ 1999), is one of the legal issues that requires attention. Unethical upselling practices that violate consumer rights can cause both financial and psychological harm to consumers, and can damage the reputation and trust of businesses. This shows that there are a number of legal issues related to upselling in Law Number 8/ 1999, such as the incompatibility between legal norms and the times, technology, and the needs of society. In addition, there is a lack of clarity and legal uncertainty regarding the definition, limitations, and conditions of legitimate and illegitimate upselling.

The effectiveness of the law in providing protection and remedies for consumers harmed by unethical upselling practices is also a concern, in addition to the lack of awareness and courage of consumers to report such harmful practices, as well as the limited authority and resources of consumer protection agencies, and the lack of government supervision and enforcement. Due to the opening up of the domestic market due to the globalization of the economy process, it is necessary to guarantee consumer getting goods and services safely. To ensure this, more effective supervision is needed from the government and other supervisory components towards business actors. This is due to the many facts that show that the business activities of business actors often deviate from ethical aspects and ignore applicable laws and regulations. Based on the existing background, the problem formulation raised in this research is about how legal protection against upselling practices that harm consumers and how consumer dispute legal remedies can be carried out.

Methods Research

In accordance with the title and problems to be discussed in this study and in order to provide useful results, this research was conducted with normative juridical research (Marzuki, 2017). This research uses a statutory and regulatory approach related to existing legal issues or legal issues, and a case approach and conceptual approach that uses primary and secondary legal sources.

Results And Discussion

Legal Protection for Consumers in Protecting Consumers from Harmful Upselling Marketing Strategies

Legal protection must consider various stages, where the protection arises from legal provisions and regulations established by the community, which are basically the result of agreement and responsibility for the actions taken. In addition, legal protection is also related to the concepts of legal certainty, legal benefits, legal justice, and legal guarantees. Legal protection is an effort to protect the public from arbitrary actions taken by the authorities that are not in accordance with the law, with the aim of creating order and tranquility (Redjeki, 2000). Based on the term consumer protection, the broader the definition of protection, the greater the scope of consumer protection itself. On the other hand, there is a possibility to file a claim if there are elements that can meet the criteria for violating the regulations that apply to business actors either directly or who are bound in an agreement (Heryansyach & Latumahina, 2022).

To implement an upselling strategy, consumers must agree because they are the ones who will enjoy the product or service by paying an additional fee. However, in some cases, many consumers feel cheated and suffer losses due to the lack of clear information about the upselling, so they have to spend more on products that were not planned before. An agreement between the two parties is the basis for an agreement. When an agreement is made, it must be reached

through mutual consent that is beneficial to both parties. In practice, contracts are often based on fraud, abuse of power, mistake or duress. Consumer protection laws are necessary because the position of consumers is weaker than that of economic actors. The goal of consumer protection legislation is to raise customers' awareness and sense of dignity. This law will also indirectly encourage economic actors to run their businesses responsibly. However, all of these goals can only be achieved if consumer protection laws are consistently enforced. To realize these expectations, it is necessary to fulfill several minimum requirements, among others:

- 1) Consumer protection law must be fair to both consumers and businesses, so it not only burdens businesses with responsibility, but also protects their rights to conduct business honestly;
- 2) Law enforcement officers must be equipped with adequate means and accompanied by responsibility;
- 3) Increased consumer awareness of their rights;
- 4) Change the value system in society towards an attitude of action that supports the implementation of consumer protection.

To protect the rights and obligations of businesses and consumers, the government issued Law Number 8/ 1999. This law aims to enable businesses and consumers to anticipate losses that may occur in buying and selling transactions. The Law Number 8/ 1999 serves as both preventive and repressive protection for parties involved in consumer disputes. Article 15 of the Law Number 8/ 1999 states that "Business actors in offering goods and/or services are prohibited from using coercion or other means that can cause physical or psychological disturbance to consumers." This implies that customers have the freedom to select goods or services that suit their needs and preferences, whereas business players must give comprehensive and understandable information on the extra products they offer. If this information is not provided, then upselling can be considered a form of fraud that violates consumer rights and contradicts consumer protection principles.

Therefore, The Law Number 8/ 1999 is meant to serve as a strong legal foundation for tools and non-governmental consumer organizations that work to empower customers by providing consumer education and guidance. Because it is hard to expect business actors to be knowledgeable, consumer empowerment is crucial, it's economic tenet is to use the least amount of capital to maximize profit. Consumer interests could be harmed by this principle, either directly or indirectly (Sutedi, 2008).

Forms of Upselling that Can Harm Consumers

The relationship between business actors and consumers creates a bond that is individual or personal in nature as a special legal relationship. This special legal relationship is very diverse and is influenced by various factors, among others:

1. Condition, price of a certain type of commodity;
2. Offer and terms of agreement;
3. Existing facilities, before and after sales, and so on;
4. The needs of the parties at any given point in time.

The growing nature of transactions between business actors and consumers has implications for changes in the legal construction of the relationship between economic actors and consumers. Business actors use various alternative ways to implement sales methods that are effective in the market and in demand so that consumers are tempted. Consumers are predominantly interested if the goods and or services have a low price and have high quality. Consumers do not hesitate to buy these products, and they buy them immediately, especially when there is a discount. Business actors offer and promise many kinds of benefits to attract

consumers to buy products and or services. Of course, if the information does not match the reality, it will be very detrimental to consumers.

The activities of economic actors to seek profit and gain market advantage cannot be realized through good sales, often manipulation and activities aimed at deceiving consumers, resulting in many losses for consumers. All errors referred to in connection with this offense are errors, both intentional and due to negligence. Willfulness indicates the intent or intention of the producer to cause certain consequences. Upselling is one of the marketing strategies used to increase sales volume, up selling is in the form of selling products by offering additional products that are in demand by buyers, where this addition is a product that does have more other advantages. The application of upselling marketing strategies is carried out by business actors when consumers want to pay or order a certain product or service then the business actor will offer to upgrade to a certain product at a higher price and quality (Amallia Fadhila et al., 2022).

Like the case of up selling experienced by a J.CO brand consumer who shared his experience through TikTok social media with the username @syanaika which went viral on social media, especially on Twitter and TikTok, on May 23, 2023 located at J.CO Mall Graha Cijantung, East Jakarta. The consumer initially wanted to buy a dozen donuts from the J.CO brand which did not cost 100,000 *rupiah* (Rp. 100.000), before making a payment a J.CO employee offered to buy a package by promising a cheaper price, but the offer was rejected by the consumer. But afterward, the J.CO employee still tried to offer the package price and the consumer still refused the offer. Then when the consumer is about to make a payment, the bill received by the consumer is 124,000 *rupiah* (Rp 124.000) which is the package price of 1 dozen donuts plus 5 pastries. Initially, consumers thought that the pastries were a bonus for purchasing the donuts that consumers wanted before, but it turned out that consumers had to pay extra for the 5 pastries (Wasis Sapto, 2023).

This up-selling case occurred again on September 10, 2024, which coincided at J.CO Thamrin Plaza, Medan City. Tiktok social media account with the username @dhita.widya as a consumer wants to buy 1 dozen donuts and asks the cashier then the J.CO cashier explains that the price is 113,000 *rupiah* (Rp. 113.000), with a free bonus burger. However, after the payment was completed, the consumer was not given a receipt and after being checked by the consumer it turned out that the price of 1 dozen donuts was only 97,000 *rupiah* (Rp. 97.000), with a burger price of 16,000 *rupiah* (Rp. 16.000), which at the time of the transaction the business actor stated that the burger should be a bonus but at the time of implementation it turned out that consumers were tricked into buying the burger. @dhita.widya made the tiktok video with the aim of educating other consumers so that they do not feel cheated and there are more victims who are trapped by harmful upselling. consumers hope that business actors will immediately repair consumer confidence by evaluating their promotional methods.

The application of upselling in practice capitalizes on consumer ignorance regarding the application of upselling marketing strategies and does not provide further information regarding the offer provided. Although the upselling strategy is an effective tool to increase sales and customer satisfaction, some problems often occur when implementing it. This can decrease customer satisfaction and even cause consumers to be reluctant to return. Upselling will not be effective without a proper understanding of consumer preferences and needs. In the implementation of upselling activities, the main key is not to force customers, business actors should be able to convince consumers. This includes offering products in detail, understanding consumer characteristics, giving consumers the opportunity to choose, presenting reasonable offers, and adding value to the products offered.

Regulation of Marketing Strategy According to the Consumer Protection Law and Sale and Purchase Agreement

Marketing policies, also known as marketing strategies, are the plans and guidelines set by companies to achieve their marketing objectives. Marketing policy summarizes a series of steps and decisions taken to introduce, promote, and sell products or services to the intended target market (Didik Hariyanto, 2023). The agreement in the formation of an agreement should be a mutually beneficial agreement. However, in practice, it is often the case that the agreement reached is the result of coercion, fraud, oversight, or abuse of circumstances. An agreement that occurs due to the presence of one of these elements is referred to as an agreement that contains a defect of will.

The application of upselling marketing strategies does not yet have specific regulations in positive law in Indonesia. Based on this, in principle, the applicability of upselling marketing techniques in purchasing and selling transactions is subject to the valid terms of the agreement, considering that buying and selling is included in an agreement. The valid terms of the agreement are regulated in Article 1320 of the Civil Code, namely:

1. The agreement between the parties making the agreement means that the agreement made is made consciously without coercion, oversight, or fraud;
2. The capacity to perform legal acts;
3. Certain things and;
4. A lawful (legal) cause.

The first and second conditions are referred to as subjective conditions, which if not fulfilled, one of the parties can request the cancellation of the agreement that has been made. The third and fourth conditions are called objective conditions which if not fulfilled result in the agreement being null and void. If false information is provided in violation of the information provision agreement, or if the company's information is inaccurate, then the application of the upsell to the sale is invalid. Therefore, the agreement does not fulfill the elements of an agreement. The implementation of an effective upsell marketing strategy should be done according to the free will of the parties involved. Businesses and consumers need to know the value achieved from the additional costs incurred in order to complete the contract based on the parties' wishes.

Article 1313 of the Civil Code states that "an agreement causes one person to bind himself to another". This means an achievement or obligation that must be carried out by a person or legal subject arising from an agreement. A sale and purchase agreement can run and be carried out properly if all parties involved comply with the provisions contained in the agreement, including the contents of the agreement and the obligations described in it. This is then reaffirmed in Article 1339 of the Civil Code "The agreement is not only binding on what is expressly stipulated in it, but also everything that by its nature approval is required based on justice, custom, or law" (Sinaga, 2018).

The existence of an agreement between the parties is the basis of an agreement. When an agreement is formed, it must be reached by consensus and be favorable to both parties. In reality, agreements are often reached based on an act of fraud, abuse of power, mistake, or duress. An agreement that contains a defect of will in the agreement arises from one of these components (Sukananda & Mudiparwanto, 2020). Effective upsell marketing strategy implementation has legal ramifications, including the parties' rights and obligations, The agreement becomes legally binding on the parties as a result of it, the agreement has legal force and will be enforced, and it cannot be unilaterally withdrawn. However, if the terms of the agreement are not met, the purchase transaction can be canceled.

The implementation of the *upselling* marketing strategy requires rules related to its implementation. Article 8 to Article 13 of the Law Number 8/ 1999 regulates various prohibited

acts for business actors, such as providing false or misleading information, using coercion to encourage purchases, and using misleading marketing techniques. In essence, these articles explain that the parties to a sale and purchase transaction, both consumers and entrepreneurs, must act honestly and not commit fraud in conducting a sale and purchase transaction. Should the upsell marketing strategy's implementation violate the terms of the relevant laws and regulations, legal or extrajudicial action can be taken. When implementing an upsell marketing strategy, businesses and consumers need to realize the value of the products they receive for the additional costs incurred. Therefore, a sale and purchase contract that implements upsell is a valid contract because it shows a free agreement between the parties' wishes.

Consumer protection laws are not intended to destroy the businesses of business actors, but rather to promote a healthy business environment, increase the awareness of economic actors of the importance of consumer protection, and improve the domestic market to adapt to changes. As a result of the process of economic globalization, consumers need to continue to be guaranteed the welfare and certainty of the quality, quantity, and safety of the goods and services they receive in the market. In a legal context, upsell strategies must be implemented with integrity and provide clear information to consumers. Failure to do this can result in legal consequences, including contract termination and lawsuits for false information. This suggests that the application of upsell strategies is ineffective if the information provided is misleading or inaccurate.

There are no regulations in Indonesian positive law that explicitly and directly regulate the implementation of upselling marketing tactics by business figures, whether carried out conventionally or through electronic systems. The parties to a sale and purchase transaction, both consumers and business actors, must be honest and not commit fraud in conducting sale and purchase transaction activities. Legal efforts can be applied both through litigation and non-litigation channels if the application of up-selling marketing strategies does not meet the provisions of the applicable law. The implementation of legal protection for consumers who suffer losses and the liability of business actors in the upselling strategy at J.CO is consumers who are harmed by business actors for improper promotion. The Consumer Protection Law, which states that consumers have the right to make complaints about this to the Consumer Dispute Resolution Body (BPSK) with the existing evidence.

Legal Efforts Against Business Actors Who Conduct Marketing Strategies for Food Products that Harm Consumers

Normative regulations have been put in place to prevent business actors from creating and trading items that do not comply with the terms and conditions of the law in an effort to safeguard consumers from goods produced and traded by these actors. If corporate actors break these rules, they will face legal repercussions (Tuela, 2014). The obstacles faced in consumer protection efforts are not only because consumers are not aware of their rights, but also because most business actors think that protecting consumers will cause losses to business actors. The wrong perception among business actors can be rectified by considering the following two points:

- 1) Fraud committed by producers not only harms consumers, but also honest and responsible business actors;
- 2) Responsible business actors can develop their business without harming consumers, by taking action against fraudulent business actors.

The formation of the law seeks to obtain equal legal standing between consumers and producers. The reflection of this can be observed from the establishment of reverse proof procedures, regulation of standard agreements, provided access to supervision for Non-Governmental Organizations (NGOs) and the existence of consumer Dispute Settlement Bodies in handling and producers and consumers. The approach to repressive legal protection can be

done in two ways, namely non-litigation and litigation. To overcome the lengthy and formal court process, Law Number 8/ 1999 offers an alternative by providing out-of-court (non-litigation) dispute resolution through conciliation, mediation, and arbitration methods.

A legal remedy that aims to prevent harm to consumers caused by the use of defective products by ensuring that business actors fulfill their obligations to conduct business with integrity. Business actors are obliged to pay compensation, compensation or reimbursement for losses arising from the use, use or exploitation of products that are traded not in accordance with the promise. Therefore, in situations where consumers suffer losses due to the application of upsell marketing strategies by businesses, consumers are entitled to claim substantial and measurable material compensation from businesses. This compensation can cover the real and measurable losses suffered by consumers due to fraud in the upsell marketing strategy carried out by businesses.

The J.CO upsell case reflects the challenges in marketing practices that must balance increasing sales with maintaining consumer trust. Price transparency and product communication are essential to avoid misunderstandings and protect your company's reputation. J.CO needs to improve its service system based on consumer reactions. This includes training employees to provide clear and non-misleading information to consumers. In addition, prices and product offerings should be more transparent to avoid misunderstandings. This case also highlights the importance of educating consumers about marketing techniques such as upselling to help them make better purchasing decisions.

Responsibility of Business Actors Toward Consumers if Harmed Due to Food Product Marketing Strategies

Social responsibility places a strong emphasis on producers' and consumers' duty to uphold their rights, as well as society in general. Consumer rights are obligations for producers, while consumer obligations are rights for producers, and vice versa. In conducting communication, producers not only introduce and promote the company name and the products offered, but also have the responsibility to educate the public. In carrying out communication, producers must convey the actual conditions regarding the company and the products offered, and have an obligation to educate consumers (Yani, Ahmad, 2003).

Business actors should not only focus on profit or the smooth running of the business, but are also obliged to fulfill their responsibilities towards the end users of goods and services. Sometimes, this obligation is neglected, resulting in consumers losing their rights in using these goods and services. Businesses are required to provide clear and accurate information about the products or services offered. They must ensure that the information provided is not misleading and does not make consumers feel compelled to buy unwanted products.

Businesses can be held liable if they breach a contract, provide a different product than intended, or provide misleading information to consumers. In this case, the business actor is obliged to pay compensation. Liability is part of what business actors must do to protect consumers. If it turns out that this loss can be proven because there is an agreement relationship between the business actor and the consumer, the next stage is to look for parts of the agreement that are not fulfilled by the business actor resulting in harm to the consumer. If this loss is caused by this event, then a business actor can be categorized as a party in default. And if there is no legal relationship in the form of an agreement between the business actor and the consumer, the fault must be sought from other channels, namely by constructing the facts of the event into a tort. In general, claims for compensation for losses suffered by consumers due to the use of products or as a result of sales promotions carried out by business actors, whether in the form of material, physical or mental losses, can be based on two categories, namely claims based on default and claims based on unlawful acts.

In general, compensation claims for losses suffered by consumers due to the use of products or sales promotions carried out by business actors in the form of material, physical and mental losses can be divided into two categories, namely claims based on default and claims based on unlawful acts. Consumers have the right to file a complaint to BPSK if they feel aggrieved, and BPSK has the authority to impose sanctions on business actors who violate the law. Administrative sanctions can be imposed if they are in accordance with the provisions in the Law Number 8/ 1999 and are expected to have a deterrent effect on business actors, encouraging them to comply with legal regulations and act more ethically in marketing products or services.

Conclusion

Law Number 8/ 1999 provides a legal framework that protects the rights of consumers and safeguards them from harmful marketing practices, including unclear or deceptive upselling strategies. Law Number 8/ 1999 establishes consumers' right to receive accurate and transparent information about products, as well as the right not to be forced to buy goods or services they do not want. The legal consequences of implementing a legitimate upselling marketing strategy are that the agreement applies as law to both parties, is unilaterally irrevocable, and is done in good faith. Consequently, the sale and purchase agreement may be terminated if the upselling marketing tactic is applied improperly.

Business actors are prohibited from marketing and trading items that do not comply with the requirements and provisions of laws and regulations as part of a normative effort to protect consumers from goods produced and traded by business actors in order to prevent harm to them stipulated in the Law Number 8/ 1999. Business actors are responsible for paying compensation to consumers, compensation can be in the form of refunds, replacement of similar or equivalent goods, health care, or compensation in accordance with applicable laws and regulations.

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