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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23 January 2026
Pronounced on: 23 March 2026

\+ FAO(OS) (COMM) 111/2025, CM APPL. 41897/2025 & CM APPL. 41898/2025

M/S PRODUCTS AND IDEAS
INDIA PVT. LTD. .....Appellant

Through: Mr. J. Sai Deepak, Sr. Adv. with Mr. Aditya Kumar Yadav, Mr. Vijay Kasana, Mr. Chirag Verma, Mr. Vaibhav Sharma, Mr. Vaibhav Chaudhary, Mr. Gaurav Chaudhary, Mr. Alok Yadav, Ms. Neha Verma, Advs.

versus

NILKAMAL LIMITED
AND ORS .....Respondents

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Rohit Kumar Singh, Mr. Sajid Mohammad, Mr. Hitesh Mutha, Ms. P.R. Mala, Mr. Paras Sharma, Ms. Shubhanginee Singh, Advs. for R-2
Mr. Krishnan Venugopal, Sr. Adv. with Mr. Sanjeev Kumar Singh, Mr. Rahul Chitnis, Mr. Ankur Kashyap, Mr. Devansh Shekhar, Ms. Umang Motiyani, Ms. Nandini Kaushik and Mr. Labeeb Faaeq, Advs. for R-5

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

% **JUDGMENT**
23.03.2026

2026:DHC:2385-DB

C. HARI SHANKAR, J.

A. The *lis*

1. This appeal assails order dated 1 July 2025 passed by a learned Single Judge of this Court, whereby IA 37339/2024 and IA 49076/2024, preferred by the appellant under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908[1], have been dismissed, and IA 41504/2024, filed by Respondent 2 under Order XXXIX Rule 4 of the CPC, has been allowed. Resultantly, the prayer of the appellant for interim injunction, pending disposal of the suit, has been rejected and the existing *ad interim* injunction granted *vide* order dated 27 August 2024 has been vacated.

2. We have heard Mr. J Sai Deepak, learned Senior Counsel for the appellant, Mr. Jayant Mehta, learned Senior Counsel for Respondent 2 and Mr. Krishnan Venugopal, learned Senior Counsel for Respondent 5, at length. Learned Counsel have also filed written submissions.

B. Facts

I. Submissions of appellant before learned Single Judge

3. An Exclusive Agency Agreement[2] was executed between Stella Industrial Co. Ltd[3] and the appellant Products & Ideas on 1 April

[1] "CPC" hereinafter
[2] "EAA" hereinafter
[3] "SIC" hereinafter

2017. SIC was the holder of the "STELLA 德听"[4] trade mark, registered in China. The EAA appointed the appellant as SIC's exclusive agent for distribution, sale and promotion of STELLA branded commercial induction cookers[5] in India. The appellant was given the authority to decide the designs and logos under which the induction cookers would be sold in India. According to the appellant, the EAA was periodically renewed, with the last renewal being till 31 March 2027, though SIC asserts that the EAA was terminated on 13 November 2024.

4. In exercise of the authority granted by the EAA, the appellant was selling induction cookers, under the STELLADEXIN mark, since 2017.

5. Purportedly under permission granted by SIC, the appellant obtained registrations of the word mark STELLADEXIN with effect from 5 February 2022, under Section 23 of the Trade Marks Act, 1999[6] in Classes 7, 9 and 11[7]. Commercial induction cookers fall under Class 11, and are specifically covered by the registration. In the suit, from which this appeal emanates, the appellant relied on the following communication, as evidence of the permission granted by SIC to the appellant to obtain registrations for the STELLADEXIN mark:

[4] Transliterates into English as "STELLADEXIN"
[5] Referred to, in the EAA, as "inductions"
[6] "the Act" hereinafter
[7] Of the NICE classification of trade marks

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TO WHOM IT MAY CONCERN

This is to inform that STELLADIXEN (STELLA 德昕®) is our registered brand name in China. We have allowed M/s Products & Ideas (India) Pvt Ltd, New Delhi who are our Exclusive agents for India & surrounding countries to register the brand name STELLADIXEN (STELLA 德昕®) in INDIA. They have registered this brand name with our permission.

2024-6-21

汕头高新区德昕实业有限公司
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The appellant further submitted that, from conversations which had taken place between the appellant and SIC on the WeChat platform, it was clear that SIC was always aware of the registrations obtained by the appellant for the word mark STELLADEXIN.

6. The appellant also holds a registration dated 12 July 2024, under the Copyright Act, 1957, for the logo 

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7. The appellant claims that the STELLADEXIN mark, as used by the appellant for induction cookers had, over a process of time, amassed considerable goodwill and reputation, as is apparent from the appellant's sales turnover for the period 2015-2016 to 2022-2023, with the turnover in the year 2022-2023 alone being ₹ 16.27 crores.

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8. Respondent 1 Nilkamal Ltd and Respondent 2 Cambro-Nilkamal Pvt. Ltd. constitute a joint venture and that Respondent 2 was selling induction cookers using the infringing mark "STELLA" on its website. The appellant claims to have come to learn of the said mark in June 2024. The use of the mark STELLA by Respondents 1 and 2, alleged the plaint, amounted to infringement of the appellant's registered STELLADEXIN word marks within the meaning of Section 29(2)(b)[8] of the Act. The appellant also alleged that Respondent 2 was seeking to pass of its products as those of the appellant. A comparison of the rival marks, and rival products, was thus provided in the plaint, to emphasize the point:

Appellant's Mark	**Respondent 2's mark**
	

[8] (2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

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(*b*) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark;

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is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

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Appellant's product	Respondent 2's product
	

9. Predicated on these assertions, the appellant instituted the suit, seeking a decree of permanent injunction, restraining the respondent from manufacturing or selling induction cookers or any other allied or cognate products using the mark STELLA or any other mark which was confusingly or deceptively similar to the appellant's registered STELLADEXIN word mark.

II. Submissions of Respondent 2 before the learned Single Judge

10. Before the learned Single Judge, Respondent 2 contended that the EAA only permitted the appellant to use the STELLADEXIN mark, and not to obtain any registration in respect thereof. Respondent 2 also contested the genuineness and veracity of the alleged letter of permission dated 21 June 2024, pointing out that the letter even misspelt the mark as "STELLADIXEN". Moreover, submitted Respondent 2, the letter was not signed by any authorised signatory of SIC.

11. Respondent 2 also invoked Section 34[9] of the Act in its defence. It was submitted that SIC was using the STELLADEXIN mark in India prior to the registration and prior to the use of the mark by the appellant, as the appellant had applied for registration only on proposed to be used basis. As such, it was contended that no infringement of the mark could be alleged to have been committed by SIC. Inasmuch the appellant and Respondent 2 were both importers of goods bearing the STELLADEXIN mark from SIC, no case of infringement could lie against Respondent 2 either.

III. Submissions of SIC before the learned Single Judge

12. SIC echoed the submission of Respondent 2 that SIC was the prior adopter of the STELLADEXIN mark in India. It was submitted that STELLADEXIN is merely an English translation of the mark "STELLA 德昕".

13. SIC acknowledged, however, that it had applied under Section 23 of the Act for the registration of the mark STELLA/STELLA as well as device mark STELLA 德昕 Stella Dexin in Class 11, but that the application was abandoned.

[9] **34. Saving for vested rights**. – Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a predecessor in title of his;

whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark.

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14. SIC further submitted that it had been selling its branded products in India through M/s Mittal International since 2013, by way of evidence of which SIC placed on record invoices and shipping receipts. The appellant was merely a re-seller of SIC's products, with whom SIC had no subsisting exclusive contractual relationship. On the other hand, it was asserted that Respondent 2 was authorised by SIC to import and sell its products, for which purpose reference was made to letters addressed by SIC to Respondent 2 on 5 March 2024 and 5 June 2024. It was also pointed out that the EAA between SIC and the appellant was terminated on 13 November 2024.

15. On 27 August 2024, a learned Single Judge of this Court granted *ex parte ad interim* injunction in favour of the appellant and against the respondents, restraining the respondents from using the mark STELLA or STELLADEXIN or any other mark which would be deceptively similar to the appellant's registered trade marks.

C. The Impugned Judgment

16. The learned Single Judge has dismissed the appellant's Order XXXIX application solely by invoking Section 34 and Section 30(3)[10] of the Act.

[10] (3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade by reason only of —
(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or
(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

17. Apropos Section 34, the learned Single Judge holds that SIC was the prior adopter and user of the STELLA mark in China since 2002 and had been selling its branded products in India since 2013 through Mittal International, as was apparent from the invoices placed on record. As against this, the earliest invoice placed on record by the appellant was of 2017. As such, the learned Single Judge holds that SIC has been using the mark in India prior to the registration of the mark in favour of the appellant and prior to the commencement of user of the mark by the appellant in India.

18. Inasmuch as there was continuous user by the SIC prior to the registration and the commencement of use of the mark by the appellant, Section 34 operated as a proscription against any grant of injunction in favour of the appellant and against the respondent.

19. If sale of the goods by SIC could not be treated as infringing, the learned Single Judge holds that, *ipso facto*, no infringement could be alleged against Respondent 2 either, as Respondent 2 was merely a re-seller of the branded goods of SIC. It was not the case of the appellant that Respondent 2 was using the mark in its own right.

20. As Respondent 2 was only an authorised distributor of SIC, the finding that SIC was not guilty of infringement would also extend to Respondent 2.

21. The learned Single Judge also invokes the principle of international exhaustion of trademark rights *vis-à-vis* Section 30(3) of the Act. Applying the said provisions, and invoking the judgment of

the Division Bench of this Court in ***Kapil Wadhwa v. Samsung Electronics Co. Ltd.***[11], the learned Single Judge holds that a sale by an authorized distributor cannot be treated as infringing.

22. Premised on these reasons, the learned Single Judge holds that no case for grant of stay in favour of the appellant existed. Accordingly, the existing *ex parte ad interim* order of injunction was vacated and the appellant's application under Order XXXIX Rules 1 and 2 of the CPC stands dismissed by the impugned judgment.

D. Issues that arise for consideration

23. As was noted by this Court in its order dated 17 July 2025, only three issues arise for consideration in the present matter.

24. The first is whether the invocation, by the learned Single Judge, of Section 34 of the Act was legal and proper.

25. Assuming SIC was entitled to the benefit of Section 34, the second issue is whether, therefore, no action for infringement would lie against Respondent 2.

26. The third is whether the appellant's claim was rightly rejected by applying the principle of international exhaustion, invoking Section 30(3) of the Act.

[11] **2012 SCC OnLine Del 5172**

27. There can be no dispute about the fact that if either Section 30(3), or Section 34, applies, then, even if the respondents' acts are otherwise infringing within the meaning of Section 29, the appellant would not be entitled to any injunction. Section 30(3) engrafts an exception to infringement, and Section 34 proscribes grant of any injunction against the defendant, if the circumstances envisaged therein apply.

E. Analysis and findings

28. All the three issues, to our mind, have necessarily to be answered in the negative.

I. Re. Section 34

29. Apropos the first issue, i.e., the applicability of Section 34 of the Act, the findings of the learned Single Judge read thus:

> "12. The undisputed position obtaining in the present case is that the defendant no. 5 company is the prior adopter and user of the Stella Marks in China since 2002. Defendant no. 5, Stella Industrial Company Limited, was established in 1983 in Taiwan and has a global presence.
>
> 13. It is also the case of the defendant no.5 that its products bearing the aforesaid marks have been sold in India since the year 2013 through M/s Mittal International. In this regard, the defendant no. 5 has placed on record invoices to show that the products bearing the impugned marks were being sold by the defendant no. 5 in India since 2013 (filed as document no. 2 of the defendant no. 5's documents).
>
> 14. As per the case set up by the plaintiff, the dealings between the plaintiff and the defendant no. 5 began in 2015 and the first agreement entered into between the plaintiff and the defendant no.

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> 5 was in the year 2017. Even though the plaintiff claims use since 2015, the earliest invoice filed by the plaintiff is of the year 2017.
>
> 15. The position that emerges from the aforesaid narration is that the defendant no. 5 has been selling goods in India under the Stella Marks much before the plaintiff's use of the impugned mark in India or its trademark registrations in India.
>
> 16. Accordingly, the defendant no. 5 would be entitled to the defence under Section 34 of the Trade Marks Act being a continuous prior user since 2013, before the use by the plaintiff or the date when the plaintiff obtained registration."

30. We find ourselves unable to sustain these findings.

31. Para 13 of the impugned order refers to user of the mark by SIC in China, which has no relevance to the aspect of infringement, or passing off, in India. User outside India is relevant only in cases of passing off in which percolation of trans border reputation into India is pleaded. No such case is pleaded by the appellant.

32. Para 14 of the impugned judgment acknowledges commencement of user of the asserted mark, by the appellant, at least since 2017. The learned Single Judge has found SIC to be a prior user of the mark, within the meaning of Section 34 of the Act, on the basis of four invoices placed on record by SIC which, according to the impugned judgment, reflect prior user in the form of sales in India through Mittal International.

33. On its plain words, Section 34 requires not mere prior user by the respondent, but prior *continuous* user, antedating both registration and user of the asserted mark by the plaintiff. Though the learned Single Judge has held that there was proof of prior continuous user,

we are unable to uphold this finding, even within the limited confines of appellate interference charted by the Supreme Court in ***Wander India Ltd v. Antox (India) P. Ltd***[12] and ***Pernod Ricard v. Karanveer Singh Chhabra***[13]. It is *prima facie* clear, to us, that there is no evidence even of prior user of the STELLA or STELLADEXIN mark by SIC in India, much less proof of prior continuous user.

34. The proof of prior user, by SIC, as per the impugned judgment, is in the form of invoices evidencing sale of SIC's goods through Mittal International.

35. These invoices are a mere four in number, spanning the period 2012 to 2016. Of these four invoices, the invoices dated 25 December 2012 and 23 September 2015 make no reference to the mark STELLA or STELLADEXIN. The remaining two invoices are mere proforma invoices, which cannot be representative of any concluded commercial transaction. A Division Bench of the High Court of Kerala, in ***Karn Vir Mehta v. Collector of Customs***[14], held, thus, with respect to proforma invoices:

> "10. … Proforma invoice is nothing more than a tentative statement of the seller for sale of the goods at the price mentioned therein. Until the buyer accepts it and enters into the actual transaction of sale and purchase, there can be no presumption that the goods must have been sold at that price."

[12] **1990 Supp (1) SCC 727**
[13] **2025 SCC OnLine SC 1701**
[14] **1997 SCC OnLine Ker 238**

We respectfully agree with the High Court of Kerala that proforma invoices cannot be treated as proof of sales, in the absence of any other corroborative evidence to that effect.

36. Even if, *arguendo*, the four invoices, on which the respondents rely, were to be treated as credible, they do not, *prima facie*, evidence *continuous* user of the STELLA or STELLADEXIN mark by SIC prior to 2017 when, even as per the impugned judgement, user by the appellant, of the mark, commenced.

37. The invocation of Section 34 by the learned Single Judge is, therefore, to our mind, unsustainable.

II. Re. finding that, therefore, no infringement could be alleged against Respondent 2

38. The decision of the learned Single Judge on the second issue is a consequence of the first. The learned Single Judge holds thus:

> "17. In fact, the plaintiff has been one of the re-sellers of defendant no. 5's products in India, similar to the defendant no. 2, who is importing products from the defendant no. 5 and selling the same in India. *Since, the sale of the products bearing the impugned marks by the defendant no. 5 cannot amount to infringement, axiomatically, the sale of the said goods by defendant no. 2, who is nothing but an authorized re-seller of the defendant no. 5, cannot amount to infringement*."
>
> (Emphasis supplied)

39. The learned Single Judge has, therefore, rejected the plea of infringement, as advanced against Respondent 2, on the sole ground that, if SIC could not be held guilty of infringement, Respondent 2, as

an authorized reseller of SIC, could also not be held guilty of infringement.

40. This finding cannot sustain for three reasons.

41. In the first place, the finding that SIC is not guilty of infringement is predicated on Section 34 of the Act. We have already held that the finding is unsustainable.

42. Secondly, even if SIC were not to be regarded as guilty of infringement, that would not *ipso facto* mean that no case of infringement could lie against Respondent 2. Import of goods bearing the registered trademarks bearing the registered trademark of another independently constitutes "use" of the registered trademark, within the meaning of Section 29(6)(c)[15] of the Act, for the purposes of infringement.

43. The finding that, as SIC was not an infringer, *ipso facto* Respondent 2 would also not be an infringer is also, therefore, not sustainable.

III. <u>Re. Section 30(3) and the principle of international exhaustion</u>

[15] (6) For the purposes of this section, a person uses a registered mark, if, in particular, he—
(a) affixes it to goods or the packaging thereof;
(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;
(c) imports or exports goods under the mark; or
(d) uses the registered trade mark on business papers or in advertising.

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44. The third issue is as to whether the invocation, by the learned Single Judge, of the principle of international exhaustion, and the invocation of Section 30(3) of the Act, is sustainable in law. The finding of the learned Single Judge, on this aspect, reads thus:

> "19. At this stage, it would be useful to appreciate the legal position with respect to import and resale of goods bearing the trademark of the registered proprietor. The principle of international exhaustion is duly recognized under Section 30(3) of the Trade Marks Act. *Any person in India has the right to legally import goods from abroad bearing the trademarks of an entity and sell the same in India. Such sale of original goods by an authorized reseller/importer would not amount to trademark infringement.* Reference in this regard be made to judgment passed by the Division Bench of this Court in ***Kapil Wadhwa v. Samsung Electronics Co. Ltd.***, which was followed by the Coordinate Bench in ***Seagate Technology LLC v. Daichi International***[16].
>
> 20. Keeping in view the aforesaid, I am of the opinion that the plaintiff has failed to make out a *prima facie* case for grant of interim injunction."
>
> (Emphasis supplied)

45. International exhaustion of trademarks rights does not expressly find mention in the Act. The judgment of the Division Bench in ***Kapil Wadhwa***, on which the learned Single Judge relies, itself notes that the principle of international exhaustion is contained in Section 30(3) of the Act.

46. Though we have had occasion to examine the effect of Section 30(3) in some detail in our recent decision in ***Western Digital Technologies Inc. v. Geonix International (P) Ltd.***[17]**,** the provision is, in the present case, completely inapplicable on facts.

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[16] **2024 SCC OnLine Del 3767**
[17] **2026 SCC OnLine Del 901**

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47. Section 30(3) states that if goods *bearing a registered trademark* are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person would not be infringing if the goods have been put in the market *by the proprietor of the registered trademark or with his consent*. SIC does not have any registration, in India, of *any* trade mark. The only registered proprietor of the mark is the appellant. Respondent 2 was not importing the goods, bearing the appellant's registered trademark, with the consent of the appellant. As such, Section 30(3) would not apply.

48. The sentences from para 19 of the impugned judgment, italicized in the paragraph as extracted above, to our mind, reflect the error in the view adopted by the learned Single Judge. The learned Single Judge observes that "any person in India has the right to legally import goods from abroad *bearing the trademarks of any entity* and sell the same in India" and that "such sale of original goods by an authorized reseller/importer *would not amount to trademark infringement*". With respect, the observation is incorrect in law. The import can only be *by the proprietor of the registered trade mark or with his consent*, absent which the import would certainly be infringing within the meaning of Section 29 of the Act.

49. SIC has sought to contend that Section 30(3) would be applicable as Respondent 2 had purchased the goods from SIC, which was the registered owner of the STELLADEXIN mark in China. The submission is unsustainable in law. Section 30(3), on its plain words,

applies "where the goods bearing a *registered trade mark* are lawfully acquired by a person". In such a case, the provision would apply where the goods are sold by the lawful acquirer with the consent of the proprietor of the registered trade mark. The words "registered trade mark" cannot include registration outside India, as Section 2(w) defines "registered trade mark" as meaning "a trade mark which is actually on the register and remaining in force" and "register" is defined, in Section 2(t), as meaning "the Register of Trade Marks referred to in sub-section (1) of Section 6". A trade mark which is registered in India alone is, therefore, a "registered trade mark" for the purposes of the Act and, therefore, for the purposes of Section 30(3) thereof as well.

50. For this reason, the third finding of the learned Single Judge can also not sustain.

F. The Sequitur

51. In view of the aforesaid discussion, we are of the opinion that the impugned judgment of the learned Single Judge is not sustainable on facts or in law.

52. As the learned Single Judge has proceeded only on the basis of the above three issues – on which, we concede, had the findings of the learned Single Judge been acceptable on principle, no other issue would arise for consideration – we deem it appropriate, while setting aside the impugned judgment, to remand IA 37339/2024, IA 4906/2024 and IA 41504/2024 for consideration afresh to the learned

Single Judge, uninfluenced by any observation contained in the impugned judgment.

53. Needless to say, as the impugned judgment stands set aside, the *ex parte ad interim* order dated 27 August 2024, which was in existence and stands vacated by the impugned judgment, would revive and remain in force till a *de novo* decision is taken by the learned Single Judge.

G. Conclusion

54. Accordingly, we quash and set aside the impugned judgment dated 1 July 2025 passed by the learned Single Judge.

55. IA 37339/2024, IA 49706/2024 and IA 41504/2024 are remanded for consideration and decision *de novo* by the learned Single Judge. In order to expedite matters, we direct the parties to appear before the learned Single Judge on 2 April 2026.

56. We request the learned Single Judge to take up the aforenoted applications for consideration and decision afresh in terms of the judgment passed by us today and to decide the applications as expeditiously as possible.

57. No party would be entitled to seek adjournment on the date fixed by us before the learned Single Judge.

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58. The appeal stands allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 23, 2026
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