

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Consumer Financial Protection Bureau,

Plaintiff,
v.

BrightSpeed Solutions, Inc, and
Kevin Howard,

Defendants.

Case No. 1:21-cv-01199

STIPULATED JUDGMENT AND ORDER

BrightSpeed Solutions, Inc, and
Kevin Howard,
Defendants.

The Consumer Financial Protection Bureau (Bureau) commenced this civil action on March 3, 2021 to obtain injunctive and monetary relief and civil penalties, from BrightSpeed Solutions, Inc., (BrightSpeed or Corporate Defendant) and Kevin Howard (Howard or Individual Defendant) (together, Defendants). The Complaint alleges violations of sections 1031(a) and 1036(a) of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), 5536(a)(1)(A), and Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. §§ 6101 *et seq.*, and its implementing rule, the Telemarketing Sales Rule (TSR), 16 CFR § 310.3(b), against the Defendants in connection with their payment processing services.

The Bureau and Defendants agree to entry of this Stipulated Judgment and Order (Order), without adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint.

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action and venue is proper in this jurisdiction under 28 U.S.C. § 1391(b) and (c), and 12 U.S.C. § 5564(f).

2. The Complaint alleges claims upon which relief may be granted.

3. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each Party agrees to bear its own costs and expenses, including, without limitation, attorneys' fees.

4. Defendants neither admit nor deny the allegations in the Complaint, except as specified in this Order. For purposes of this Order, Defendants admit the facts necessary to establish the Court's jurisdiction over them and the subject matter of this action.

5. Entry of this Order is in the public interest.

DEFINITIONS

6. The following definitions apply to this Order:

a. **Affected Consumers** means the more than 130,000 consumers for whom, from January 1, 2016 to August 31, 2018, BrightSpeed processed a remotely created check to facilitate the purchase of any product or service offered or sold through telemarketing, including antivirus software or technical-support services, from one of BrightSpeed's Merchant Clients.

b. **“Assist” or “Assisting Others”** includes, but is not limited to:

- i. consulting in any form whatsoever;
- ii. providing paralegal or administrative support services;

- iii. performing customer service functions, including but not limited to, receiving or responding to consumer complaints;
 - iv. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including but not limited to, any telephone sales script, direct mail solicitation, or the text of any Internet website, email, or other electronic communication or advertisement;
 - v. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
 - vi. providing names of, or assisting in the generation of, potential customers;
 - vii. performing marketing, billing, or payment services of any kind; and
 - viii. acting or serving as an owner, officer, director, manager, or principal of any entity.

Credit has the same meaning as set forth in the CFPA, 12 U.S.C. § 5481(7). Credit means a right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

Consumer Financial Product or Service has the same meaning set forth in the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5481(5).

- e. "**Consumer Lending Activities**" means: (1) granting a consumer the right, for primarily personal, family, or household purposes, to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchases; and (2) purchasing accounts or debts generated as described in subsection (1), above.
 - f. "**Defendants**" means the Individual Defendant and the Corporate Defendant.
 - i. "**Individual Defendant**" means Kevin Howard or any other name by which he might be known.
 - ii. "**Corporate Defendant**" means BrightSpeed Solutions, Inc. and its successors and assigns.
 - g. "**Debt**" has the same meaning as set for in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(5), and includes any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
 - h. "**Debt Collection Activities**" means all activities related to efforts to collect a Debt, either directly or indirectly. For the purposes of this Order, Debt Collection Activities do not include the collection of debt owed personally to Defendant Kevin Howard by his friends, or family members. Debt Collection Activities also do not include the collection of debt owed by a guarantor to one of Defendant Kevin Howard's business interests.

- i. “**Deposit-Taking Activity**” has the same meaning set forth in the CFPA, 12 U.S.C. § 5481(8) and includes:
 - i. the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;
 - ii. the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or
 - iii. the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.
- j. “**Effective Date**” means the date on which the Order is entered by the Court on the docket.
- k. “**Enforcement Director**” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.
- l. “**Financial Advisory Services**” has the same meaning set forth in the CFPA, 12 U.S.C. § 5481(15)(viii), and includes providing services to consumers on individual financial matters or relating to proprietary financial products or services, including but not limited to (i) providing credit counseling to any consumer; and (ii) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure.

- m. "**Merchant Clients**" means any of BrightSpeed's clients who requested or obtained payments for antivirus software or technical-support services using remotely created checks.
 - n. "**Payment Processing Activities**" means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment mechanism, including, but not limited to, remotely created checks. Whether accomplished through the use of software or otherwise, Payment Processing includes, among other things: (a) reviewing and approving applications for Payment Processing; (b) providing the means to transmit consumer payment transaction data to acquiring banks or other financial institutions; (c) clearing, settling, or distributing consumer payments from acquiring banks or financial institutions; or (d) processing returned payments via any mechanism.
 - o. "**Person**" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.
 - p. "**Related Consumer Action**" means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Defendants based on substantially the same facts as described in the Complaint.
 - q. "**Relevant Period**" includes the period from January 1, 2016 through August 31, 2018.
 - r. "**Telemarketing**" has the same meaning as in the TSR, 16 CFR § 310.2(gg), and includes a plan, program, or campaign which is conducted to induce the purchase of goods or services or a

charitable contribution, by use of one or more telephones and which involves more than one interstate phone call.

CONDUCT PROVISIONS

1

Permanent Ban on Payment Processing, Consumer Lending, Deposit Taking, Debt Collection, Telemarketing, and Financial Advisory Services

IT IS ORDERED that:

7. Defendants, whether acting directly or indirectly, are permanently restrained from:

- a. Participating in or Assisting Others engaging in:
 - i. Payment Processing Activities;
 - ii. Consumer Lending Activities;
 - iii. Deposit-Taking Activities;
 - iv. Debt Collection Activities;
 - v. Telemarketing with respect to the offering or provision of any Consumer Financial Product or Service; and
 - vi. Advertising, marketing, offering for sale, selling, or providing any Financial-Advisory Services.
 - b. Receiving any remuneration or other consideration from, holding any ownership interest in, providing services to, or working in any capacity for any person engaging in or assisting in, any of the following:
 - i. Payment Processing;
 - ii. Consumer Lending;

- iii. Deposit-Taking Activities;
 - iv. Debt Collection Activities;
 - v. Telemarketing with respect to any Consumer Financial Product or Service; and
 - vi. Advertising, marketing, offering for sale, selling, or providing any Financial-Advisory Services.

Nothing in this Order shall be read as an exception to this Paragraph.

II

Customer Information

IT IS FURTHER ORDERED that:

8. Defendants, and their officers, agents, servants, employees, and attorneys and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, may not:

- a. disclose, use, or benefit from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer's account (including bank account, or other financial account), of any person that Defendants or any Merchant Client obtained prior to the Effective Date in connection with the processing of payments; or
 - b. attempt to collect, sell, assign, or otherwise transfer any right to collect payment from any consumer who purchased or agreed to purchase antivirus software or technical-support services from Defendants' Merchant Clients.

1 However, customer information may be disclosed if requested by a
2 government agency or required by law, regulation, or court order.

4 **MONETARY PROVISIONS**

5 **III**

6 **Order to Pay Redress**

7 **IT IS FURTHER ORDERED** that:

8 9. A judgment for monetary relief and damages is entered in favor of the
9 Bureau and against Defendants in the amount of fifty-four million dollars
10 (\$54,000,000), representing the total amount of payments processed by
11 Defendants for consumer transactions involving purported services to be
12 provided by Merchant Clients that have not yet been refunded, as alleged in the
13 Complaint in this action. However, based on sworn financial statements and
14 supporting documentation that Defendants submitted to the Bureau and
15 Defendants' inability to pay the judgment for monetary relief, full payment of this
16 judgment will be suspended upon satisfaction of the obligations in Sections V and
17 VI and will be subject to Section IV of this Order.

18 **IV**

19 **Effect of Misrepresentation or Omission**
20 **Regarding Financial Condition**

21 **IT IS FURTHER ORDERED** that:

22 10. The suspension of the monetary judgment entered in Section III of
23 this Order and the Bureau's agreement to enter into this Order are expressly
24 premised on the truthfulness, accuracy, and completeness of Defendants' sworn
25 financial statements and supporting documents that were submitted to the
26 Bureau on or about January 28, 2021, February 4, 2021, February 16, 2021, and
27
28

1 June 28, 2021, October 7, 2021, and November 30, 2021, which Defendants
2 assert are truthful, accurate, and complete.

3 11. If upon motion by the Bureau, the Court determines that Defendants
4 have failed to disclose any material asset or that any of the Defendants' financial
5 statements or supporting documents contain any material misrepresentation or
6 omission, including materially misstating the value of any asset, then the Court
7 shall terminate the suspension of the monetary judgment entered in Section III,
8 and without further adjudication, shall reinstate the monetary judgment entered
9 in Section III of this Order, and the full judgment of \$54 million dollars
10 (\$54,000,000) shall be immediately due and payable.

11 12. If the Court terminates the suspension of the monetary judgment
12 under this Section, the Bureau will be entitled to interest on the judgment,
13 computed from the date of entry of this Consent Order, at the rate prescribed by
14 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid.

13. Provided, however, that in all other respects this Order shall remain
in full force and effect unless otherwise ordered by the Court; and, provided
further, that proceedings instituted under this provision would be in addition to,
and not in lieu of any other civil or criminal remedies as may be provided by law,
including any other proceedings that the Bureau may initiate to enforce this
Order.

V

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

14. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint and continuing until the Effective

1 Date, and taking into account the factors in 12 U.S.C. § 5565(c)(3), including
2 Defendants' financial resources, as set forth in sworn financial statements and
3 supporting documentation that Defendants submitted to the Bureau, and
4 Defendants' inability to pay a greater penalty, Individual Defendant must pay a
5 civil money penalty of \$500,000 to the Bureau (the CMP).

6 15. Within 10 days of the Effective Date, the Individual Defendant must
7 pay the CMP by wire transfer to the Bureau or to the Bureau's agent in
8 compliance with the Bureau's wiring instructions, in satisfaction of the CMP
9 referenced in Paragraph 14 of this Section.

10 16. The CMP paid under this Order will be deposited in the Civil Penalty
11 Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. §
12 5497(d).

13 17. Defendants must treat the civil money penalty paid under this Order
14 as a penalty paid to the government for all purposes. Regardless of how the
15 Bureau ultimately uses those funds, Defendants may not:

- 16 a. Claim, assert, or apply for a tax deduction, tax credit, or any other
17 tax benefit for any civil money penalty paid under this Order; or
- 18 b. Seek or accept, directly or indirectly, reimbursement or
19 indemnification from any source, including but not limited to
20 payment made under any insurance policy, with regard to any civil
21 money penalty paid under this Order.

22 18. Defendants agree that the CMP imposed by the Order represents a
23 civil penalty owed to the United States Government, is not compensation for
24 actual pecuniary loss, and, thus, as to the Individual Defendant, it is not subject
25 to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).

VI

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

19. In the event of any default on the Defendants' obligation to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

20. Defendants relinquish all dominion, control, and title to the funds paid under this Order to the fullest extent permitted by law and no part of the funds may be returned to Defendants.

21. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau, including in a proceeding to enforce its rights to any payment or monetary judgment under this Order, such as a nondischargeability complaint in any bankruptcy case.

22. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Bureau under Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against each Defendant, even in such Defendant's capacity as debtor-in-possession.

23. Under 31 U.S.C. § 7701, Defendants, unless they already have done so, must furnish to the Bureau their taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

24. Within 30 days of the entry of a final judgment, order, or settlement in a Related Consumer Action, Defendants must notify the Enforcement Director

of the final judgment, order, or settlement in writing. That notification must indicate the amount of redress, if any, that Defendants paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Defendants may not argue that Defendants are entitled to, nor may Defendants benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund.

25. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Defendants based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Defendants must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

26. Upon written request of a representative of the Bureau, any consumer reporting agency must furnish consumer reports to the Bureau concerning Individual Defendant under Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 b(a)(1), which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

COMPLIANCE PROVISIONS

VII

Reporting Requirements

IT IS FURTHER ORDERED that:

1 27. For 25 years from the Effective Date, Defendants must notify the
2 Bureau of any development that may affect compliance obligations arising under
3 this Order, including but not limited to, a dissolution, assignment, sale, merger,
4 or other action that would result in the emergence of a successor company; the
5 creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts
6 or practices subject to this Order; the filing of any bankruptcy or insolvency
7 proceeding by or against Defendants; or a change in Defendants' name or
8 address. Defendants must provide this notice at least 30 days before the
9 development or as soon as practicable after learning about the development,
10 whichever is sooner.

11 28. Within 7 days of the Effective Date, each Defendant must:

- 12 a. Designate at least one telephone number and email, physical, and
13 postal addresses as points of contact that the Bureau may use to
14 communicate with Defendants;
- 15 b. Identify all businesses for which Defendants are the majority
16 owner, or that Defendants directly or indirectly controls, by their
17 names, telephone numbers, and physical, postal, email, and
18 Internet addresses;
- 19 c. Describe the activities of each such business, including the
20 products and services offered, and the means of advertising,
21 marketing, and sales;
- 22 d. Identify Individual Defendant's telephone numbers and all email,
23 Internet, physical, and postal addresses, including all residences;
24 and
- 25 e. Describe in detail Individual Defendant's involvement in any
26 business for which he performs services in any capacity or which
27 he wholly or partially owns, including Individual Defendant's title,

role, responsibilities, participation, authority, control, and ownership.

29. Defendants must report any change in the information required to be submitted under Paragraph 27 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

30. Within 90 days of the Effective Date, and again one year after the Effective Date each Defendant must submit to the Enforcement Director an accurate written compliance progress report sworn to under penalty of perjury (Compliance Report), which, at a minimum:

- a. Lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which each Defendant has complied with each such paragraph and subparagraph of this Order; and
 - b. Attaches a copy of each Order Acknowledgment obtained under Section VIII, unless previously submitted to the Bureau.

VIII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

31. Within 7 days of the Effective Date, each Defendant must submit to the Enforcement Director an acknowledgment of receipt of this Order, sworn under penalty of perjury.

32. Within 30 days of the Effective Date, Corporate Defendant and Individual Defendant, for any business for which they are the majority owner or which they directly or indirectly control, must deliver a copy of this Order to each of their board members and executive officers as well as to any managers,

1 employees, service providers, or other agents and representatives who have
2 responsibilities related to the subject matter of the Order.

3 33. For 10 years from the Effective Date, Corporate Defendant and
4 Individual Defendant, for any business for which they are the majority owner or
5 which they directly or indirectly control, must deliver a copy of this Order to any
6 business entity resulting from any change in structure referred to in Paragraph
7 26, any future board members and executive officers, as well as to any managers,
8 employees, or other agents and representatives who will have responsibilities
9 related to the subject matter of the Order before they assume their
10 responsibilities.

11 34. Defendants must secure a signed and dated statement acknowledging
12 receipt of a copy of this Order, ensuring that any electronic signatures comply
13 with the requirements of the E-Sign Act, 15 U.S.C. §§ 7001-7006, within 30 days
14 of delivery, from all persons receiving a copy of this Order under this Section.

15 35. Within 90 days of the Effective Date, Defendants must provide the
16 Bureau with a list of all persons and their titles to whom this Order was delivered
17 through that date under Paragraphs 32 and 33 and a copy of all signed and dated
18 statements acknowledging receipt of this Order under Paragraph 34.

19 36. Should Corporate Defendants seek to transfer or assign all or part of
20 their operations that are subject to this Order, Corporate Defendants must, as a
21 condition of sale, obtain the written agreement of the transferee or assignee to
22 comply with all applicable provisions of this Order.

VIII

Recordkeeping

IT IS FURTHER ORDERED that

37. Individual Defendant must create, for at least 10 years from the

1 Effective Date, the following business records for any business for which
2 Individual Defendant, individually or collectively with the Corporate Defendant,
3 is a majority owner or which he directly or indirectly controls:

- a. All documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau.

7 Defendants must retain these documents for at least 10 years after creation
8 and make them available to the Bureau upon the Bureau's request.

9 38. Defendants must maintain, for at least 10 years from the Effective
10 Date or 10 years after creation, whichever is longer:

- a. For each individual Affected Consumer and his or her purchase of antivirus software or technical-support services from the Defendants' Merchant Clients: the consumer's name, address, phone number, email address, amount paid, description of the service purchased, and, if applicable, the date and reason the consumer cancelled his or her subscription to the service;
 - b. For any consumer purchase of antivirus software or technical-support services from any Merchant Client, accounting records showing the gross and net revenues Defendants generated as payment processors; and
 - c. All consumer complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.

24 Defendants must make these materials available to the Bureau upon the Bureau's
25 request.

IX

Notices

1 **IT IS FURTHER ORDERED** that:

2 39. Unless otherwise directed in writing by the Bureau, Defendants must
3 provide all submissions, requests, communications, or other documents relating
4 to this Order in writing, with the subject line, “*CFPB v. BrightSpeed Solutions,
5 Inc. and Kevin Howard*, Case No. 1:21-cv-01199,” and send them by overnight
6 courier or first-class mail to the below address and contemporaneously by email
7 to Enforcement_Compliance@cfpb.gov:

8
9 Assistant Director for Enforcement
10 Bureau of Consumer Financial Protection
11 ATTENTION: Office of Enforcement
12 1700 G Street, N.W.
13 Washington D.C. 20552

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15 **X**

16 **Cooperation with the Bureau**

17 **IT IS FURTHER ORDERED** that:

18 40. Defendants must cooperate fully to help the Bureau determine the
19 identity and location of, and the amount of injury sustained by, each Affected
20 Consumer. Defendants must provide such information in their or their agents’
21 possession or control within 14 days of receiving a written request from the
22 Bureau.

23
24 **XI**

25 **Compliance Monitoring**

26 **IT IS FURTHER ORDERED** that, to monitor Defendants’ compliance with
27 this Order including the financial representations upon which the judgment was
28 suspended:

41. Within 14 days of receipt of a written request from the Bureau, Defendants must submit additional compliance reports or other requested information which must be sworn under penalty of perjury; provide sworn testimony; or produce documents.

42. For purposes of this Section, the Bureau may communicate directly with Defendants, unless Defendants retain counsel related to these communications.

43. Defendants must permit Bureau representatives to interview any employee or other person affiliated with Defendants who has agreed to such an interview. The person interviewed may have counsel present.

44. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.

XIII

Retention of Jurisdiction

IT IS FURTHER ORDERED that:

45. The Court will retain jurisdiction of this matter for the purpose of enforcing this Order.

XIV

Service

IT IS FURTHER ORDERED that:

46. This Order may be served upon Defendants by electronic mail, certified mail, or United Parcel Service, either by the United States Marshal, the Clerk of the Court, or any representative or agent of the Bureau.

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IT IS SO ORDERED.

DATED this ____ day of _____, 2022.

The Honorable John J. Tharp Jr.
United States District Judge

1 Dated: January 18, 2022

2 So Stipulated and Agreed:

3 
4 /s/
5 Tianna Baez
6 Christian Woolley
7 Samuel Taxy
7 Consumer Financial Protection Bureau
8 *Attorneys for Plaintiff*

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1 /s/
2 Richard Epstein
3 Greenspoon Marder LLP
4 *Atorneys for Defendants*

5 /s/ *Kevin Howard*

6 Kevin Howard
7 *Defendant*

5 /s/ *Kevin Howard*

6 BrightSpeed Solutions, Inc.
7 *Defendant*

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