



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR PART 410

RIN 3084-AB44

Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (“Commission”) seeks comment on the proposed repeal of its Trade Regulation Rule Concerning the Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (“Picture Tube Rule” or “Rule”). This Notice of Proposed Rulemaking (“NPR”) provides background on the Picture Tube Rule and this proceeding, discusses public comments received by the Commission in response to its Advance Notice of Proposed Rulemaking (“ANPR”), and solicits further comment on the proposed repeal of the Rule.

DATES: Written comments must be received on or before May 14, 2018. Parties interested in an opportunity to present views orally should submit a written request to do so as explained below, and such requests must be received on or before May 14, 2018.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write “Picture Tube Rule (No. P174200)” on your comment and file your comment online at [is https://ftcpUBLIC.commentworks.com/ftc/picturetuberule](https://ftcpUBLIC.commentworks.com/ftc/picturetuberule) by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue, NW, Suite CC-5610, Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: John Andrew Singer, Attorney, (202) 326-3234, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission finds that using expedited procedures in this rulemaking will serve the public interest. Specifically, such procedures support the Commission's goals of clarifying, updating, or repealing existing regulations without undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views, and arguments on whether the Commission should amend or repeal the Rule. Because written comments should adequately present the views of all interested parties, the Commission is not scheduling a public hearing or roundtable. However, if any person would like to present views orally, he or she should follow the procedures set forth in the **DATES, ADDRESSES,** and **SUPPLEMENTARY INFORMATION** sections of this document. Pursuant to 16 CFR 1.20, the Commission will use the procedures set forth in this document, including: (1) publishing this NPR; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a document published in the Federal Register. Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

I. Background

The Commission promulgated the Picture Tube Rule in 1966¹ to prevent deceptive claims regarding the size of television screens and to encourage uniformity and accuracy in marketing. When the Commission adopted the Rule, it expressed concern about consumer confusion regarding whether a television's advertised dimension represented the actual viewable area of the convex-curved cathode ray tube or included the viewable area of the picture tube plus non-viewable portions of the tube, such as those behind a casing. In addition, the Commission concluded that most consumers thought of the sizes of rectangular shaped objects, like television screens, in terms of their length or width, not their diagonal dimension.²

Based on these facts, the Rule sets forth the means to non-deceptively advertise the dimensions of television screens.³ Specifically, marketers must base any representation of screen size on the horizontal dimension of the actual, viewable picture area unless they disclose the alternative method of measurement (such as the diagonal dimension) clearly, conspicuously, and in close connection and conjunction to the size designation.⁴ The Rule also directs marketers to base the measurement on a single plane, without taking into account any screen curvature,⁵ and includes examples of both proper and improper size representations.⁶

¹ 31 FR 3342 (Mar. 3, 1966).

² *Id.*

³ 16 CFR 410.1.

⁴ The Rule provides that "any referenced or footnote disclosure of the manner of measurement by means of the asterisk or some similar symbol does not satisfy the 'close connection and conjunction' requirement of this part." *Id.*, Note 2.

⁵ *Id.*, Note 1.

⁶ *Id.*, Note 2.

II. Regulatory Review

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews assist the Commission in identifying rules and guides that warrant modification or repeal. The Commission last reviewed the Rule in 2006, leaving it unchanged.⁷

In its 2017 ANPR initiating the review of the Rule, the Commission solicited comment on, among other things: the economic impact of and the continuing need for the Rule; the Rule's benefits to consumers; and the burdens it places on industry, including small businesses.⁸ The Commission further solicited comment, and invited the submission of data, regarding how consumers understand dimension claims for television screens, including: whether consumers understand the stated dimensions; whether the dimensions are limited to the screen's viewable portion; and whether the dimensions are based on a single-plane measurement that does not include curvature in the screen. The Commission also solicited input on whether advances in broadcasting and television technology, such as the introduction of curved screen display panels and changing aspect ratios (*e.g.*, from the traditional 4:3 to 16:9), create a need to modify the Rule. Finally, the Commission requested comment regarding whether the Rule should address viewable screen size measurement reporting tolerances and rounding.⁹

⁷ 71 FR 34247 (Jun. 14, 2006).

⁸ 82 FR 29256 (Jun. 28, 2017).

⁹ *Id.* at 29257-58.

The Commission received two comments in response,¹⁰ both urging the Commission to repeal the Rule. In this NPR, the Commission discusses those comments and proposes repealing the Rule.

III. Issues Raised by Commenters to the ANPR

Both commenters characterized the Rule as an unnecessary relic from when televisions used curved cathode ray tubes and asserted the Rule is no longer needed to prevent consumer deception about television screen sizes.

An individual consumer, Jonathan Applebaum, stated that, unlike 50 years ago, comparative information about televisions, including screen size, is now widely available to consumers on the Internet and by visiting retail showrooms. He also stated that, due to advances in technology, overall picture quality, not screen size, drives consumers' purchasing decisions. Specifically, in addition to screen size, consumers consider pixels, aspect ratios, screen material, backlighting, contrast, and refresh rate. He also noted that since the Commission introduced the Rule, many different devices, such as computer monitors and cellphones, are capable of receiving programming once only available on televisions. To include these types of devices in the scope of the Rule would require the Commission to expand its coverage significantly. However, he urged the Commission not to do so because the relevant information already is readily available in the marketplace.

A trade association representing the U.S. consumer technology industry, the Consumer Technology Association (CTA), commented that when the Commission adopted the Rule in 1966, televisions used curved cathode ray tubes, and manufacturers often placed portions of screens behind casings. Now, however, televisions with fully viewable, single plane, flat screens

¹⁰ The comments are located at: <https://www.ftc.gov/policy/public-comments/2017/07/initiative-707>. Jonathan Applebaum (#3) and Consumer Technology Association ("CTA") (#4) submitted comments.

have become “ubiquitous.”¹¹ CTA further stated diagonal measurement is now the marketplace standard, with consumers expecting a screen’s diagonal measurement to be the size advertised.¹² Therefore, CTA asserted there is no evidence that repealing the Rule would change this universal practice. Nor is there any basis to conclude that consumers expect any representation of screen size other than the diagonal measurement.¹³ CTA concluded that even the modest cost to the industry for complying with the Rule does not justify its retention.¹⁴

Alternatively, if the Commission were to retain the Rule, CTA urged the Commission not to modify it or expand its coverage. Since marketers of devices such as computer monitors, tablets, and smartphones already represent viewing screen size based on the screen’s diagonal measurement, CTA asserted that no consumer benefit would accrue from expanding the Rule to include such devices. Nor would there be any consumer benefit from modifying the Rule to make a screen’s diagonal measurement the default measurement since it is already the marketplace standard.¹⁵ CTA also stated the Rule should not address television screen aspect ratios because changing ratios do not affect how manufacturers take the diagonal measurement of a television screen.¹⁶

¹¹ CTA at 5-6. CTA asserts that only a “tiny percentage” of televisions sold today in the United States have curved screens. *Id.* at 9. According to CTA, modern curved screen televisions have concave screens (as opposed to the convex curvature for cathode ray tube screens), and a single-plane measurement of a concave screen actually understates the viewable picture size. CTA therefore asserts that the small number of curved screen televisions in the marketplace and the consistent understatement of a concave screen’s size mean that these types of screens do not warrant any special treatment. *Id.*

¹² *Id.* at 4-5, 7.

¹³ *Id.* at 7-8.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 8-9.

¹⁶ *Id.* at 9-10.

IV. Staff Observations

Commission staff visited retail stores, reviewed newspaper circulars, and surfed websites offering televisions for sale. Staff observed that virtually every television had a flat screen and that the entire screen was visible. Staff further observed that marketers advertised the size of every television screen, as well as the viewing screens for devices such as computer monitors, tablets, and cellphones, using a diagonal measurement.

V. Basis for Proposed Repeal of the Rule

Section 18 of the FTC Act, 15 U.S.C. 57a, authorizes the Commission to promulgate, amend, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). The Commission regularly reviews its rules to ensure they are up-to-date, effective, and not overly burdensome, and has repealed a number of trade regulation rules after finding they were no longer necessary to protect consumers.¹⁷ Comments in the record and staff's observations suggest that current conditions support repealing the Rule. Specifically, as explained in detail below: (1) the Rule has not kept up with changes in the marketplace; (2) mandatory screen measurement instructions are no longer necessary to prevent consumer deception; and (3) manufacturers are not making deceptive screen size claims, which is consistent with the fact that the Commission has not brought any enforcement actions against marketers making such claims in more than 50 years.

¹⁷ See, e.g., 16 CFR Part 419 (games of chance) (61 FR 68143 (Dec. 27, 1996)) (rule outdated; violations largely non-existent; and rule has adverse business impact); 16 CFR Part 406 (used lubricating oil) (61 FR 55095 (Oct. 24, 1996)) (rule no longer necessary, and repeal will eliminate unnecessary duplication); 16 CFR Part 405 (leather content of belts) (61 FR 25560 (May 22, 1996)) (rule unnecessary and duplicative; rule's objective can be addressed through guidance and case-by-case enforcement); and 16 CFR Part 402 (binoculars) (60 FR 65529 (Dec. 20, 1995)) (technological improvements render rule obsolete).

A. The Rule Has Not Kept Up with Changes in the Marketplace

Since the Commission adopted the Rule in 1966, there have been substantial changes in television screen technology, particularly in the past decade. The Rule appears to be neither necessary nor appropriate in light of these changes.

In 1966, television screens had cathode ray tubes (CRTs).¹⁸ CRT tubes are convex, *i.e.* the screen's apex is closest to the viewer, and the screen curves away from the viewer.¹⁹ Portions of CRT-based television screens did not provide a viewable image.²⁰ Further, because of their design, *e.g.*, televisions built into consoles, portions of CRT-based television screens often were not visible.²¹

There have been significant changes in television screen technology, particularly in the past decade.²² Due to these changes, flat screen televisions are ubiquitous today.²³ As staff observed, virtually all televisions available in the marketplace today have flat screens,²⁴ in which the viewable image covers the entire surface. Moreover, these televisions are surrounded by thin

¹⁸ CTA at 4.

¹⁹ *See id.* at 9.

²⁰ *Id.* at 4; 31 FR at 3342.

²¹ CTA at 4; 31 FR at 3342.

²² CTA at 5.

²³ *Id.*

²⁴ *Id.* at 5, 9. Staff observed a handful of concave curved screen televisions, where the apex of the screen's curve is farthest from the viewer, and the sides of the screen curve towards the viewer, are available for purchase. Though introduced with some fanfare, the popularity of concave screen televisions is waning, and it appears that only a single manufacturer currently produces them. *See, e.g.*, Alex Cranz, *The Curved TV Gimmick Might Finally Be Dead*, GIZMODO (Jan. 4, 2017), <https://gizmodo.com/the-curved-tv-fimmick-might-finally-be-dead-1790743745>; David Katzmaier, *Curved TV Isn't Dead Yet. Thanks, Samsung*, CNET (Feb. 23, 2017), www.cnet.com/news/curved-tv-isnt-dead-yet-thanks-samsung. Unlike with convex CRT television screens, the Rule's single-plane measurement requirement is not necessary to prevent consumer deception regarding the screen size of concave screen televisions. If anything, the single-plane measurement of a concave television screen understates its effective viewable picture size. *See, e.g.*, www.rtings.com/tv/curved-vs-flat-tvs-compared (providing a demonstrative illustration that, at a distance of 8 feet from the screen, a concave screen measured as 55 inches on a single-plane basis has an effective screen size of 55.8 inches)(Aug. 2, 2017).

bezels, not casings or console walls, which do not obscure any of the screen.²⁵ Consequently, technological change appears to have rendered the Rule obsolete.²⁶

B. Mandatory Screen Measurement Instructions Are No Longer Necessary To Prevent Consumer Deception

In 1966, the Commission found that television marketers represented screen size using a variety of inconsistent and, at times, deceptive, methods.²⁷ To create clarity and uniformity in the marketplace, the Rule mandated that marketers use the single-plane horizontal dimension of the viewable portion of the television screen as the default measurement.²⁸ The Commission stated that consumers best understood the size of rectangular objects like television screens based upon their horizontal or vertical dimensions and thus made the horizontal measurement the Rule's default but allowed marketers to use other measurements so long as their use was properly disclosed.²⁹

In the over 50 years since the Rule's promulgation, the record demonstrates that the industry standard for representing television screen size has been the screen's diagonal dimension.³⁰ All of the televisions for sale that staff recently observed listed the screen's diagonal dimension. The record, including staff's observations, also suggests a universal practice of using the diagonal dimension for the viewing screen in devices not covered by the

²⁵ CTA at 5.

²⁶ *See, e.g.*, 60 FR 65529-30 (Dec. 20, 1995) (Binocular Rule repealed where technological improvements rendered rule obsolete).

²⁷ 31 FR at 3342-43 (former 16 CFR 410.1 and 410.2(e)).

²⁸ *Id.* (former 16 CFR 410.3(b)); *see also* 16 CFR 410.1.

²⁹ 31 FR at 3342-43 (former 16 CFR 410.2(d)).

³⁰ CTA at 7.

Rule (*e.g.*, computer monitors, tablets, and smartphones).³¹ The ubiquity of the diagonal dimension and the comments suggest that consumers expect to compare diagonal dimensions. Therefore, were the Commission to repeal the Rule, television marketers do not appear to have an incentive to switch to using a measurement other than the now customary diagonal dimension.³² Thus, absent the Rule, it is highly unlikely that marketers would change their screen size claims to make claims that would confuse consumers.³³

C. The Record Contains No Information Indicating Manufacturers Are Making Deceptive Screen Size Claims

The record lacks evidence of deception supporting retaining the Rule. The Commission received only two comments in response to the ANPR, both urging the Commission to repeal the Rule because it is obsolete and unnecessary. The Commission received no comments advocating for the Rule's retention or submitting information indicating that manufacturers are making deceptive screen size claims. Therefore, the record provides no basis for concluding that maintaining the Rule is necessary to prevent deception. Specifically, in the over 50 years since its adoption, the Commission has never brought an enforcement action against marketers making such claims.³⁴

³¹ *Id.* at 5-7.

³² *Id.*

³³ *Id.* at 7-8.

³⁴ *See, e.g.*, Part 419 (Games of Chance) (61 FR 68143 (Dec. 27, 1996) (Rule repealed where violations largely non-existent). In the unlikely event that, after the repeal of the Rule, the Commission should discover deceptive marketing concerning television screen size, it can address that on a case-by-case basis through enforcement actions brought under Section 5(a) of the FTC Act, 15 U.S.C. 45(a). *See also, e.g.*, Part 405 (leather content of belts) (61 FR 25560 (May 22, 1996) (after repeal, former rule's objective could be addressed through case-by-case enforcement)).

D. Preliminary Conclusions

For the reasons described above, the Commission preliminarily concludes that the Rule is outdated and no longer necessary to protect consumers. Nothing in the record suggests that repealing the Rule would likely result in any consumer deception. Therefore, the record suggests that even the minimal costs associated with the Rule for businesses now outweigh any benefits.³⁵ Should the Commission discover any deception concerning television screen size, it can address that marketing on a case-by-case basis through enforcement actions brought under Section 5(a) of the FTC Act, 15 U.S.C. 45(a), rather than through imposing an industry-wide trade regulation rule.³⁶

VI. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 14, 2018. Write “Picture Tube Rule (No. P174200)” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public FTC Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/picturetuberule>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

³⁵ CTA at 7-8.

³⁶ *Id.* at 3; *see also, e.g.*, 61 FR 25560 (May 22, 1996) (repealing Leather Belt Rule where Commission concluded rule’s objective can be addressed through case-by-case enforcement).

If you file your comment on paper, write “Picture Tube Rule (No. P174200)” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610, Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rules 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must

include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 14, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

A. Questions

The Commission seeks comment on the costs, benefits, and market effects of repealing the Rule, and particularly the cost on small businesses. Please identify any data and empirical evidence that supports your answer. Comments opposing the proposed repeal should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives.

1. Have changes in technology made the Rule unnecessary?
2. Do television marketers uniformly use the diagonal dimension of the viewing screen when representing screen size?

3. Is there any basis to conclude that, if the Commission repeals the Rule, television marketers will use a measurement other than the diagonal dimension of a screen to represent its size?
4. What would be the benefits and costs of the Rule's continuance to consumers?
5. Will repealing the Rule increase the likelihood of any consumer deception regarding the size of television screens and, if so, why?
6. What are the benefits and costs of the Rule's repeal to businesses subject to its requirements, particularly small businesses?
7. Should the Commission address deceptive acts or practices concerning how television marketers represent screen size through case-by-case enforcement rather than through an industry-wide trade regulation rule?

B. Proposed Effective Date of Repeal

The Commission proposes to repeal the Rule effective 90 days after publication of its Final Rule Notice. The Commission seeks comment on whether such an effective date provides sufficient notice to those affected by the proposed repeal of the Rule.

VII. Communications to Commissioners or Their Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period on the staff report. They shall be placed on the public record if the communication is received later.

Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of “Sunshine” Meetings.³⁷

VIII. Regulatory Flexibility Act and Regulatory Analysis

Under Section 22 of the FTC Act, 15 U.S.C. 57b-3, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it: (1) estimates that the amendment will have an annual effect on the national economy of \$100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the rescission of the Rule will not have such effects on the national economy; on the cost of televisions; or on covered parties or consumers. Accordingly, the proposed repeal of the Rule is exempt from Section 22’s preliminary regulatory analysis requirements.

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601-612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. The Commission believes that the repeal of the Rule would not have a significant economic impact upon small entities because the Rule’s repeal will eliminate any regulatory compliance costs

³⁷ See 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

regarding representations of the screen size of televisions. In the Commission's view, a repeal of the Rule should not have a significant or disproportionate impact on the costs of small entities that sell televisions. These entities appear to provide consumers with the screen size as measured by a television's manufacturer and that typically appears on a television's packaging. In addition, the Commission is not aware of any existing federal laws or regulations that address the measurement of television screens and that would conflict with the repeal of the Rule.

Therefore, based on available information, the Commission certifies that repealing the Rule as proposed will not have a significant economic impact on a substantial number of small entities. To ensure the accuracy of this certification, however, the Commission requests comment on the economic effects of the proposed repeal of the Rule, including whether the proposed repeal will have a significant impact on a substantial number of small entities. Specifically, the Commission seeks comment on the number of entities that would be affected by the proposed repeal of the Rule, the number of these companies that are small entities, and the average annual burden for each entity.

IX. List of Subjects

Advertising, Electronic funds transfer, Television, Trade practices

For the reasons stated in the preamble, and under the authority of 15 U.S.C. 57a, the Commission proposes to remove 16 CFR part 410.

By direction of the Commission.

Donald S. Clark
Secretary.

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