

FOUNDERS PROJECT

Small Businesses Say Amazon Has a Huge Counterfeiting Problem. This 'Shark Tank' Company Is Fighting Back

One entrepreneur's tale of his time in Amazon purgatory--
and how he finally prevailed.



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BEN VOLDMAN

Note: Following the weekslong Inc. investigation detailed below into Amazon's handling of sellers' counterfeiting complaints, [Amazon announced a small-scale pilot program, Project Zero](#), that allows sellers to remove listings of suspected counterfeit products.

In the late fall of 2017, Kevin Williams and Glenn Archer strode onto the [set of Shark Tank](#).

[They'd been selling their Brush Hero](#), a water-powered hose attachment with a spinning brush head that cleans cars and outdoor equipment, since 2015. Archer, a trim F-16 pilot turned corporate executive, had provided the idea for the product and much of the funding. Williams, a onetime Caribbean dive boat captain and serial startup guy, handled operations, a role that included assembling the first batch of [products in his basement](#) in Arlington, Virginia, with an assist from his 70-something mother.

At that time, their annual sales were hitting almost \$3 million, and the per-unit profit on their \$40 product was hefty. The Sharks were impressed, but, realizing there were similar items on the market, they started challenging the \$5 million valuation the co-founders sought for their company, RGK Innovations.

"You're kind of in a race," Mark Cuban told them, "because you want to get out there as quickly as possible before other people replicate you. That's tough." He declined to offer terms.

They left without a deal. Still, after the episode aired in January 2018, Williams and Archer quickly experienced what many *Shark Tank* hopefuls have learned: [Almost any appearance on the show yields a tangible bump in sales](#). Americans don't buy much outdoor equipment in January, but Brush Hero's sales on the day of the broadcast spiked more than 500-fold, and subsequent rebroadcasts brought fresh surges. Almost as quickly, though, they discovered the downside of all that attention.

Five weeks after their *Shark Tank* appearance, Brush Hero's usually dormant customer service line started ringing with an odd series of complaints: brushes that didn't rotate, or came shooting off, or shattered on first use. On [Amazon.com](#), one of the company's two primary sales channels, the product had maintained an average rating of four stars out of five, but suddenly it was inundated with scores of one-star reviews.

"It was absolutely horrendous," says Williams, a rangy, energetic father of two who had previously told himself that he'd never be an entrepreneur after watching his parents' failed textiles company wreak havoc on their lives. "We freaked out." But it was only after the first Amazon returns landed on Williams's desk that the magnitude of the disaster became clear.

To the casual eye, the defective Brush Heroes looked just like the ones the company shipped out every day--right down to the packaging, instructional materials, and the photo of Williams with his neighbor's dog. But Williams's

product was assembled in Utah from parts that were injection molded in Europe. The returns all had the same label: Made in China.

A couple summers ago, I needed a pair of sports sunglasses. Since my Amazon Prime membership offers free shipping and returns on most items, I rolled the dice on a pair of generic \$35 shades. When the package arrived, I was surprised to discover what appeared to be Swedish designer glasses that normally cost \$260. The shoddy quality made me positive they weren't the real thing. But why would someone bother to produce look-alikes, down to the logo, only to sell them as no-label knockoffs?

Brush Hero's Williams--a former U.S. government trade analyst--knew at once he was facing his "worst possible scenario."

A complaint to the seller elicited a reply in garbled English claiming "we have authorized to produce" the glasses for the Swedish brand--even though that brand wasn't mentioned in the product listing. An email to Amazon was answered, within hours, by a customer service rep apologizing for my inconvenience, issuing a full refund, and telling me to keep the glasses. But when I tried to alert other buyers to the scam, Amazon rejected my review without explanation. As of mid-January of this year, the seller was still active on Amazon, with 98 products for sale.

It was, all told, a fairly painless first trip down the weird rabbit hole of [fake merchandise on Amazon](#), the \$800 billion goliath that takes in 50¢ of every online shopping dollar spent in the U.S. If you live in one of the 45 percent of American households with a Prime membership, you likely have a similar story of your own by now--even if you've never realized an item you bought was fake. And if yours is one of the more than one million American businesses that sell on Amazon, your story might be far worse.

No one knows for certain what proportion of the billions of items retailed through Amazon every year are counterfeit. Amazon doesn't even try to

<https://www.inc.com/magazine/201904/jeff-bercovici/amazon-fake-copycat-knockoff-products-small-business.html>

answer that question, preferring to say that 99.9 percent of its product page views are for pages without copyright or trademark infringement notices against them--the answer to a question no one asked. But in a study of 321 brands offered for sale on Amazon by third-party merchants, the research firm Gartner found that one-third of their products had received at least one review by a customer reporting it as fake goods.* When the U.S. Government Accountability Office made test buys on the websites of five major e-commerce purveyors, including Amazon, for a 2018 report, nearly half of the 47 items it purchased turned out to be phony.

Counterfeits, typically manufactured in China, according to the Organisation for Economic Co-operation and Development, are believed to be more prevalent in some categories, like razor blades and makeup, and less so in others, like shoes. Global sales of counterfeits are growing at a furious 15 percent each year, and are projected to reach \$1.82 trillion in 2020, with e-commerce making up more than a quarter of that, according to the Global Brand Counterfeiting Report. (And yes: That's *trillion*, with a *t*.)



Kevin Williams, co-founder of RGK Innovations, parent company of Brush Hero. His company was battered by counterfeiters on Amazon--but now, it's beating them back. JAKE MICHAELS

To keep its customers' confidence, Amazon maintains a generous policy for items reported as fake, defective, or not as advertised--often, as in my case, issuing a refund without even requiring a return. It calls this "the A to Z Guarantee." The strategy works; consumer surveys find Amazon to be one of the most trusted large companies in America.

For sellers, it's a very different story. Many businesses that sell on Amazon don't so much trust Amazon as respect it, as a fisherman respects the sea--knowing, on any given day, it could either make him wealthy or suck him under. Amazon's massive share of e-commerce means no consumer product startup can afford to ignore it. "If you think you can have an online business without having an Amazon component, it's a pipe dream," says one soft-goods entrepreneur who's now resorting to legal remedies after a fruitless fight against trademark infringements and account piracy. But selling there, whether as a wholesaler or via its third-party retail marketplace, is fraught with

risks that Amazon has done conspicuously little to mitigate--so little that many entrepreneurs believe Amazon's top executives see those risks as features, not bugs.

Amazon is unequivocal about this not being the case. "Customers trust that they will receive authentic goods when they shop on Amazon, and anything that diminishes that trust is unacceptable," the company said in a statement to *Inc.* "Counterfeit is an age-old problem, but one that we will continue to fight and innovate on to protect customers, brands, and sellers."

But counterfeits are just one aspect of a pervasive problem of misrepresented and copycat merchandise on Amazon, which makes it dicey for anyone not named Bezos to build a business there. There are gray-market goods--which can be the real thing, obtained through unauthorized means, or an inexpensive variant thereof, often produced for sale in other countries or for a discounter like Costco. Some are the result of so-called third-shift production, in which a factory, whether accidentally or by design, overfulfills an order and cuts backdoor deals to sell the surplus. Supreme Court decisions have OK'd the selling of gray-market goods, which makes it especially hard to fight. "It's the silent killer," says the soft-goods entrepreneur, whose company has halted all online sales in an attempt to regain control.

Then there are the knockoffs--look-alike products whose names and designs have been tweaked just enough to evade trademark enforcement, at least for a while. Often, they're infringing on patents, but those are significantly harder to enforce, with Amazon requiring a costly-to-secure patent court ruling to take any action.

There is also the prospect that Amazon itself will seek to clone products and steal companies' customers. Since 2007, Amazon has offered its own store-brand goods, beginning with low-priced bed linens and towels, and moving on to everything from clothing to cough syrup. Its lineup of house brands now numbers well into the--well, again, no one knows exactly, because Amazon often takes pains to make its own lines appear independent. What's safe to

say is that, in deciding what to make, whom to market it to, and how much to charge, Amazon is drawing from all the trillions of data points it collects in its guise as the Everything Store. Every successful interaction your business has with a customer on its platform is a nail Amazon can later use to secure your coffin lid.

In an email, an Amazon spokesperson stated, "We do not use an individual seller's data to determine which private label products to launch. We look at information from many sources, including the private brands being offered by our competitors and publicly available sources, like trends highlighted in industry publications. Just like other retailers, we also look at which products are popular in our store, but do not look at individual sellers' sales." But one insider insists that Amazon is getting more aggressive about how it uses outside sellers' data. "They're crossing some trade-channel conflict stuff that's going to go down before the government before too long," predicts the former Amazon manager who now helps companies manage their e-commerce operations. "They're using the data they have to move people to their own brands. Whether they get away with it, we'll see."

Kevin Williams had worked as an international trade analyst for the U.S. Commerce Department, so he was no naif when it came to counterfeiting. He knew it was, he says, "pretty much the worst possible scenario," one that could easily strangle his fledgling success story. But dynamics unique to Amazon made the situation especially dire. In the interest of faster shipping, Williams had opted to have his products "commingled" in Amazon's fulfillment centers. Commingling means all products in a given stock keeping unit, or SKU, are treated as interchangeable, regardless of who owns them. If you order a product directly from Brush Hero and want it shipped to your house in Seattle but the closest one is sitting in a warehouse in Spokane and it belongs to a reseller based outside of Beijing, that's the one Amazon will use to fulfill the order.

For startups that lack the scale to park inventory everywhere, trading some control in exchange for speed makes sense: Amazon shoppers don't like to

wait, and Amazon privileges products that ship quickly. For Williams, this meant Amazon was fulfilling orders placed directly to his company, via its Amazon storefront, with someone else's inventory of uncertain provenance. Some of that inventory could have been legitimate, purchased from the company by a reseller attempting to make money via price arbitrage. But much of those goods were fake. Without getting his hands on them, Williams had no way of knowing which was which. Amazon says it takes care to limit the risk of customers' receiving the wrong item, which includes digital tracking that allows provenance to be established, but online forums are full of Amazon sellers warning about the perils of commingling.

The issue was complicated owing to how Amazon handles product listings. To keep its site navigable, Amazon's catalog team maintains one canonical product detail page for each unique item, which features a description, images, technical specifications, reviews, and answered customer questions. The text and images on that page are edited collectively by multiple sellers, somewhat like Wikipedia entries. Rival sellers of a product compete for space on the same listing, with price and shipping time largely determining which one gets the so-called Buy Box, the coveted spot with the "Add to Cart" button, which generates 82 percent of all sales. (The rest happen when a shopper scrolls down to the "Other Sellers on Amazon" box.)

As the only authorized seller of his product, Williams felt he ought to own the Buy Box 100 percent of the time, but over and over he watched resellers commandeer it by undercutting his price by \$10 or \$15. Which they could afford to do, since their products were often cheap fakes. The inevitable one-star reviews for those shoddy counterfeits dragged down the average rating of the listing he had been relying on to drive Amazon sales, the single biggest contributor to Brush Hero's revenue. "It was just disastrous for our Amazon business," he says.

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RGK Innovations co-founder Kevin Williams (bottom), at the Salt Lake City facility where Brush Heroes (top right) are produced. RGK Innovations has made it a practice to hire

<https://www.inc.com/magazine/201904/jeff-bercovici/amazon-fake-copycat-knockoff-products-small-business.html>

developmentally or physically challenged workers; among them is production worker Lorin Caldwell (top left). JAKE MICHAELS

The bad reviews posed multiple challenges. Since Amazon's algorithm favors higher-rated products, Brush Hero started showing up less prominently in searches for automotive cleaning tools or detailing brushes. In theory, Williams could offset that by spending more on advertising through his most effective marketing channel, Facebook. But complaints about the defective fakes were also showing up there. And, to discourage spammy ads, Facebook uses sentiment as a signal of relevance when determining the auction price for ads. As more Facebook users posted negative comments about Brush Hero, the cost for a thousand impressions, or CPM, rocketed. "All of a sudden, it's not economical for someone like me to advertise," Williams says. "You end up in this death spiral."

As the weeks went by, a sourcing agent working for Williams in China discovered a factory making fake Brush Heroes. Then a second--and then a third. By the fall, they suspected there were as many as five. Williams found himself wishing, perversely, that the counterfeiters would do a better job. "Everyone would be a lot better off if they made a good version," he says. "My customers would be happy, and leave good reviews."

Rooting out and quashing the fakes, remonstrating with Amazon account executives, and securing Brush Hero's intellectual property in foreign jurisdictions, all things Williams had never thought much about, began consuming dozens of hours each month. It threatened to overtake his job--a luxury his nine-person startup could ill afford. But it was all that stood between them and extinction. It became, he says, "like an American small-business horror story."

As horror stories go, the experience of trying to survive in Amazon's world is more Kafka than Lovecraft. Any reader of *The Trial* would recognize the labyrinthine bureaucracy, arbitrary rulings, and absurd contradictions, all under the weight of a faceless looming authority.

Even seemingly straightforward actions are fraught. To establish that a rival product is counterfeit, a brand owner typically needs to complete a test buy and shoot videos to submit as evidence. But this often requires its own subterfuge, as the fake purveyors know whose product they're copying and will cancel orders they suspect to be test buys. Brand owners who try to delete their photos from the platform to prevent unauthorized use find out they can't, because they've already clicked a box giving Amazon perpetual rights to all the content they upload--even if the photos are of the brand owners themselves, or their kids.

Fuse Chicken CEO Jon Fawcett had his I-can't-believe-this-is-happening moment in November 2016, after counterfeiters started knocking off his company's ruggedized phone-charging cables. A sleek-headed designer from Cuyahoga Falls, Ohio, Fawcett caused a minor stir in the design world with the Une Bobine, an ingenious iPhone-charging cable that doubles as a tripod and car mount. (He sought \$9,800 on Kickstarter to develop it--and ended up with more than \$200,000.)

Like Brush Hero's Williams, Fawcett saw a massive drop in sales after counterfeits appeared and a concurrent surge in one-star reviews. Unlike Williams, he lacked physical evidence and couldn't immediately locate the source of the fakes. He repeatedly sought to flag the issue to someone at Amazon but the rote responses he got were no help. After a month of this, Fawcett got a lucky break when a verified buyer posted a review featuring a photo of what was clearly a counterfeit item. "We finally have proof. Now Amazon's going to help us," he remembers thinking. Indeed, he did get a response--saying he would have to provide the identity of the seller to prompt an enforcement action. The problem: That information existed in Amazon's database--and only Amazon could access it. (Amazon's spokesperson declined to comment, citing ongoing litigation.)

Over the past two years, Amazon has rolled out a suite of tools meant to help companies like Fawcett's police their IP and defend against interlopers. Prominent among them is something called Brand Registry, which enables

brand owners to upload images, logos, product descriptions, and other materials to establish an authoritative record against which infringements can be tracked. Registered brands benefit from preemptive or fast-tracked enforcement and get notifications about things like new product listings created using their trademarks. More than 100,000 brands have registered; Amazon says these brands "on average are finding and reporting 99 percent fewer suspected infringements."

But no sooner does Amazon introduce some new enforcement tool than the shadiest operators figure out how to bend it to their use. Eager to automate everything that can be automated, and outsource everything that can't to low-paid contractors overseas, Amazon responds to many types of accusations by freezing a seller's account and forcing it to clear its name. Scammers take advantage of this hair-trigger response by reporting rival sellers' real products as counterfeit, and then swooping in to fill the vacuum left by their deactivation. To bolster their bogus reports, the scammers often create fake websites featuring supposedly canonical versions of the product that differ from the "counterfeit" (i.e., the real) one. Another black-hat tactic is to hire someone to leave flurries of positive product reviews, which triggers an algorithmic response aimed at detecting fraudulent reviews. Through means like these, the scammers can, in the parlance, hijack a listing, gaining primary control of it while exiling the brand owner to e-commerce Siberia.

"If it gets to the point where [bad actors] want to get you out of the picture, they can," says Chris McCabe, a former Amazon investigator who now works as a consultant to sellers. "Everyone who sells on Amazon has to understand how these dynamics work: Brands are under attack."

A new program called Transparency allows brands to affix individual unit identifiers, in the form of scannable QR codes, to shipments. Amazon says shipments of brands protected by Transparency that lack the QR code will be blocked. But participation costs a few cents per item**. In cases when Amazon knows there's a high risk of counterfeiting, it can also impose what's known as brand gating, which restricts third-party sellers from listing protected

brands. But Amazon doesn't offer gating for the asking, or publicly detail the criteria it uses for gating brands. When Fuse Chicken's Fawcett implored his account representative to restrict other sellers' ability to list his products, "we got told, 'We only do that for companies who spend millions on advertising.' " (Citing that litigation, an Amazon spokesperson declined to comment on Fawcett's assertion but said, "Amazon respects intellectual property and we enforce our policies, and the law, for all rights holders.")

That gets at a widely held observation among small-business owners, albeit one few of them are comfortable speaking aloud, for fear of how almighty Amazon might punish them: that Amazon's combination of action and inaction on its counterfeit epidemic hasn't done much to deter counterfeiters, but it has been effective at advancing Amazon's interests. "I would bet money C-level executives have made a conscious decision to allow it," says one.

Paramount among those interests is the imperative to keep prices low, which CEO Jeff Bezos sees as the motor that drives the "flywheel" at the center of Amazon's business. Forced to compete with their own imitators, even illegal ones, brands like Brush Hero and Fuse Chicken cut prices as low as they can sustain and then some. "If you're standing in Best Buy looking at a product, and then you pull out your phone and see it's on Amazon for 30 percent less, you're not going to buy it in that Best Buy," Fawcett says. "From a company standpoint, that erodes everything." But from Amazon's standpoint, that's a win. Even if that 30 percent-off item turns out to be a fake and gets returned, that's a shopper who's now filling up his cart on Amazon instead of somewhere else. "Amazon is trying to be a good actor and create a good marketplace," Williams says, "but at the end of the day, Amazon is the No. 1 customer."

Amazon's response to such suspicions: "This could not be further from the truth. Counterfeit damages our brand, disrupts the integrity of our store, and challenges the trust we have worked so hard to earn from customers."

Though it may be in Amazon's self-interest to keep illicit activity from running wild, individual Amazon employees may have their own, conflicting incentives. In December, the company acknowledged it had fired a handful of managers for misuse of data. Though Amazon's statement on the firings was terse, news reports indicated those dismissed were supplying internal data to sellers in exchange for kickbacks. No one with a stake in the matter believes Amazon has rooted out all its double agents. When sellers who've been banned multiple times have their privileges reinstated, when legitimate sellers mysteriously find changes in their accounts requiring high-level access, or when brand owners get their listings hijacked via unexplained catalog changes, those suspicions only grow.

Brush Hero was able to pull out of its death spiral thanks to a stroke of luck: Having participated in an incubator program called Amazon Launchpad, the company had a little-used duplicate listing to fall back on. By working through all the standard channels and some personal connections, Williams was able to persuade the catalog team to shut down Brush Hero's primary listing--which had been driving \$1.5 million in sales per year, the vast majority of the company's Amazon revenue--and delete its 800 reviews, bad and good alike. The new main listing has fewer than 200 reviews, which means Amazon's algorithm treats Brush Hero as a less-sought-after product and spotlights it in searches less often. "In their giant hive mind, I'm not performing like I used to," Williams says, "so they don't look on me as favorably."

"Quite a few founders are flat-out saying, 'We're not going to sue Amazon because we can't risk it.'"

After months of Williams's playing cops and robbers with his counterfeiters, and working every lever he could find within Amazon, Brush Hero finished 2018 with \$4 million in sales, up from a year earlier, albeit substantially below the projections Williams cited on *Shark Tank*. He now no longer allows Brush Hero's inventory to be commingled. "That's something I tell every young Amazonian: Don't ever do that," he says.

But it still grinds his gears to think about how little Amazon is willing to do to help companies like his. Brush Hero works with an IP enforcement agency called Pointer to process the trademark and copyright claims it uses to nail counterfeiters. A recent Pointer report noted that Amazon is among the least responsive of all e-commerce platforms to takedown notices, removing only 25 percent of infringing listings. "We've reported some of these sellers as many as five times," Williams says, wearily. (Amazon's response: "We permanently block bad actors from our store and work with sellers and law enforcement to hold them accountable by withholding funds and pursuing civil and criminal penalties.")

Some entrepreneurs who've found themselves caught in the machine think a lawsuit could spur faster action. To date, suing Amazon for selling counterfeit goods has been a nonstarter: Multiple courts have ruled that e-commerce platforms can't be held liable for the actions of third-party sellers who merely operate on those platforms.

That's what makes the lawsuit Fuse Chicken filed in July 2017--the one Amazon's spokesperson kept referencing when declining to comment on Fawcett's claims--worth watching. After months of trying to get anyone at Amazon to care about his counterfeiting problem, in May 2017, Fawcett got his hands on a returned item that had been shipped and sold by Amazon itself, not some fly-by-night reseller. When a cease-and-desist letter to Amazon's corporate offices failed to engender any response, Fuse Chicken took it to court. "I spent eight months trying not to file a lawsuit," Fawcett says. "They won't even talk to us, let alone help us resolve this."

His reluctance to pick a fight with the \$800 billion gorilla was well founded. Amazon's response has been to use its limitless resources to "beat us up until we give up," Fawcett says. "It's probably the most stressful thing I've ever gone through. I wake up in the middle of the night and it's all I can think about." Fawcett adds he has received plenty of encouragement from fellow founders, many of whom have seen their own businesses hurt by Amazon.

Encouragement, that is, but not emulation: "Quite a few of them are flat-out saying, 'We're not going to sue Amazon, because we can't risk it.' "

But as Amazon conspicuously fails to safeguard the interests of small businesses while advancing its own at their expense, a growing number are thinking they can't risk not defending themselves. Williams says there's been an ongoing conversation within the network of *Shark Tank* alumni companies about banding together for a class-action lawsuit. "Dozens and dozens" of those companies, he says, have encountered some version of Brush Hero's not-so-heroic arc. In banding together, the hope would be to establish once and for all Amazon's responsibility to police the illegal activity it has done so much to enable and incentivize. It would be nice if "Earth's most customer-centric company" didn't need a court to tell it to stop letting fraudsters torpedo hardworking entrepreneurs and rob their customers. But--that smile on the box notwithstanding--there's not much room for nice in the world Amazon has built.



Protecting Your Brand In Amazon's Jungle

If your product is something counterfeiters can figure out how to copy, they will. You can't stop them all--but, if you're prepared to spend the time and money it will take, you can keep them from cannibalizing your business on Amazon.

Enroll in Brand Registry 2.0. If your brand is trademarked, you can upload all your product information into this database, which Amazon uses for automated enforcement of intellectual property rights. You'll get pinged if a seller is doing something fishy, like using your logo or shipping from a country where you don't have distribution. With Brand Registry, straightforward cases of trademark or copyright infringement "can be addressed by Amazon's system very quickly," says Andy Burger, vice president of business development at Ideoclick, a Seattle firm that helps brands manage their e-

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commerce channels. Still, the sheer volume can be daunting, notes June Lai, whose company, Catalyst, issues hundreds of takedown requests every month over copies of its waterproof phone accessories. It's "like playing Whac-a-Mole," she says.

Sign up (and pay up) for Transparency. For the first time, Amazon is enabling item-level tracing of goods via scannable QR codes. Items entering a fulfillment center without the required code will be flagged and impounded. "I have high hopes for it," says Brush Hero's Williams--but it can cost a few cents per item.

If all else fails, hire a fixer. While Amazon tries to automate brand enforcement, humans still have the final call. The trick is getting one on the phone. A growing number of consultants, like Chris McCabe, specialize in helping victimized brands and resellers get their cases heard. Just be prepared to keep trying them if you don't hear back at first. In his line of work, McCabe says, "it's always busy."

**After publication of this story, an Amazon spokesperson offered this statement in response to the Gartner research report cited here:*

The methodology of this report appears to be flawed and selective, and the findings do not represent the trusted shopping experience on Amazon. We track every instance of customers using words like "fake" or "not real" in customer feedback, and use that and other information to identify and remove inauthentic products and the bad actors trying to list those products. In the US, more than 99.99% of units sold have had no customer feedback regarding counterfeit concerns, and even amongst those that do receive a customer counterfeit complaint, many turn out, on further investigation, to be genuine products. Our strong proactive measures are increasingly effective at stopping bad actors from offering products for sale, with more than 99% of suspected counterfeit listings removed proactively.

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*** Correction: The original version of this story incorrectly said sellers could avoid this cost by printing their own bar code labels.*

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