

LEGAL OPINION

The mark to be registered is 'CLEANTIZE' and the good is a sanitizer.

For the purpose of registration, it is important that the mark is free from any possible objections that may be raised on absolute grounds under section 9 or more possibly, in our case, relative grounds under section 11.

Objections Under Section 9:

Apart from the issues relating to public policy and morality, a word-mark would be subject to the test of distinctiveness. This means that the mark would be classified in a category among – generic, descriptive, suggestive, inventive, arbitrary, and fanciful - the mark would not be registered if it comes under the category of the first 2, and thus should seem related to the trade, as was laid down in the United States Supreme Court judgment of *Two Pesos, Inc. v. Taco Cabana, Inc.* 505 U.S. 763. Since, our mark 'CLEANTIZE' is not even an actual word in the dictionary, it means it's an inventive word and thereby is highly distinctive, and as such should face no objection under section 9.

Further, it has been held through various judicial pronouncements that the trademark should be viewed and compared as a whole and not in parts, as was held by the Delhi High Court in *Sun Pharma Laboratories Ltd. vs. Lupin Ltd. and Ors.* MANU/DE/0770/2018. Since 'CLEANTIZE' is one word, it will not be looked at as 'Clean' and 'tize'.

And in any scenario, the existence of 'Clean' as a part of the trademark would not create a problem as per section 17(2)(b), since the word 'Clean' has indeed become common to the trade, as can be clearly proven from its usage in the Class 5 names in the registry, with the existence of marks like 'Clean & Clear' and 'Cleangenie'; and also specifically from a perusal of the list of sanitizers being sold on e-commerce platforms like Flipkart at this very point, which contain 'Clean' in their name. On a search of 'Clean' in the Trade Mark registry it shows a total of 1159 marks, and 373 marks that are already 'Registered', some of which have been mentioned in the last page of the Search Report. Hence, the word 'Clean' can easily be argued to have lost its distinctiveness and thus, become common to trade.

These positions were further strengthened by the courts in various judgments including *Corn Products Refining Co. v. Shangrila Food Products Ltd.*, AIR 1960 SC 142 and the recent

Delhi High Court judgment of *Marico Limited vs. Agro Tech Foods Limited* **MANU/DE/3131/2010**.

With the word ‘clean’ clearly becoming common to trade in this industry, the addition of the suffix term ‘tize’ only further strengthens the distinctiveness of the mark by making it an inventive and fanciful word. Thus, arguing against the prospective objections to registration, as raised under section 9 should be successful.

Objections Under Section 11:

Now we shall look at the defence to the objection of ‘deceptive similarity’ against the pre-existing individual marks, as per the search report. It becomes important, as mentioned above, to not only look at the word as a whole, but especially since ‘Clean’ and ‘tize’ are individually common to trade, to thereby look at the similarity arising in the remaining part of the mark as a whole. There are deceptively similar marks from their structural and phonetic aspects on the register in Class 5.

1. **CLEANITIZER** – The status of this mark, filed by Cooper Pharma Ltd., bearing Application Number 2766723 is ‘Registered’. However, despite being in the same class, it’s registered under the description of ‘Pharmaceuticals’. Since, a sanitizer does not in any way of interpretation come under the category of Pharmaceuticals, it can be successfully argued, relying on *Nandhini Deluxe vs. Karnataka Co-Operative Milk Producers Federation Ltd. MANU/SC/0779/2018* that since the two marks are engaged in trade of different products, the mark would not cause confusion. However on a preliminary search it was found that Cooper Pharma Ltd. have launched their sanitizer product by the name of ‘Cleanitizer’ in May 2020, which can be found on the URL <https://www.prlog.org/12823964-cooper-pharma-announces-launch-of-cleanitizer-sanitizer-200ml.html>. Even though product was launched 6 years after the registration which happened back in 2014, due to prior usage, a strong case of passing off may be made out against us.
2. **CLEAN TICKS** – The status of this mark, filed by Shubhendu Gupta, bearing Application Number 3124486 is ‘Accepted and Advertised’, but on a ‘Proposed To Be Used’ basis. However, given the vague and wide description of the said mark covering the entire class 5, and the inexistence of evidence, on a preliminary internet search, of any actual use, especially as a sanitizer, this mark shouldn’t create a

problem. On a case of opposition from the said entity, a case of prior use may be demonstrated, aside from the obvious difference in structure and phonetics of the two words.

3. **CLEANINTES** – The status of this mark, filed by Swapnil Bhargava, bearing Application Number 3196073 is ‘Registered’. However, its description states ‘VETERINARY CARE PRODUCT ALSO HUMAN MEDICINE’, which is clearly very different from our product. Thus, the argument of the two marks being engaged in completely different trade, which therefore would not cause confusion, can be successfully applied here, placing reliance on the case of *Nandhini Deluxe vs. Karnataka Co-Operative Milk Producers Federation Ltd. MANU/SC/0779/2018*.
4. **CLENTIS** - ‘Creating Healthy Tomorrows’ – The status of this mark, filed by ‘Paresh Ramniklal Ladhani’, bearing Application Number 3557151 is ‘Registered’, however on ‘Proposed to be used’ basis. Not only is the trade description of this product very different – medicinal supplies - but also, there is no evidence of it being used as a sanitizing or cleaning agent. Thus, the aforementioned arguments, aside from the clear difference in pronunciation of the two names, and the existence of a punchline ‘Creating Healthy Tomorrows’ in the said mark, can be successfully used to show distinction.
5. **CLEANWISE** – The status of this mark, filed by ‘Impozio Global LLP’, bearing Application Number 4480339 is ‘Objected’ but ‘Awaiting Reply to Examination Report’. However, the examination report was issued on 11 June and it has been over a month, and thus, their application is liable to be set aside as ‘Abandoned’. However, due to a Supreme Court order extending the duration of filing in light of the pandemic, the result of registration cannot be said. Even though, on a preliminary internet search, there was no evidence of the use of the product, however, due to the description as ‘Alcohol-based antibacterial skin sanitizer gels’, an objection of prior usage cannot be ruled out. Be that as it may, their application has already been filed before ours, and unless we are able to show prior usage to the filing of their application as well as their usage, the only ground for arguing distinction, would be phonetically. In that regard, we believe, that ‘Clean’ being common to trade, the distinction must and can be shown between ‘tize’ and ‘wise’, despite the fact that they are rhyming.

- 6. CLEANTIZER** – ‘Wash Your hand & Kill the germs’ – The status of this mark, filed by Syed Md.Obaidullah bearing Application Number 4485573 is ‘Objected’ and ‘Awaiting Reply to Examination Report’. It contains the description – “Antibacterial cleaners; Cleansing solutions for medical use; Sanitizing wipes; Hand-sanitizing preparations; Sanitizing preparations for hospital use; Cleansing solutions for medical purposes”. This word mark has been objected to against ‘CLEANITIZER’. Thus, given the common description and the extremely similar name, an objection against this mark is likely to succeed. Unless, we can demonstrate prior usage, or if the said trademark is somehow not granted registration, it is advised that the name be changed. An argument based on an entirely different graphical image alongside a different tagline, may also be rendered weak.
- 7. CLEENTIZER** – The status of this mark, filed by ‘Bharathi Ramesh’ bearing Application Number 4499912 is ‘Objected’ on ‘Proposed to be used’ basis, and have not submitted a reply even after one month. Thus, while the application is liable to be set aside as ‘Abandoned’, due to the Supreme Court extending limitations in light of the COVID-19 pandemic, a sure answer cannot be given in regard of registration. The description of the said mark is also vague and contains the entire class 5 list. The said mark, though may not form a basis of objection, it was objected against the above mark ‘CLEANTIZER’. Thus, it is again advised to change the name.
- 8. CLEAN NIZE** – The status of this mark, filed by ‘M/S. Agnize Life Science Pvt. Ltd.’ bearing Application Number 4582984, is ‘Formalities Chk Pass’ on ‘Proposed to be used’ basis. This mark bears a vague description containing the entire list of Class 5. While, on a preliminary internet search, no evidence of usage was found, a prior usage opposition cannot be completely ruled out. However this mark should not be a problem.
- 9. KLENITIZE** - The status of this mark, filed by ‘Nurture Aqua Technology Private Limited’, bearing Application Number 4491747, is ‘Accepted & Advertised’ on a ‘Proposed to be used’ basis. The description – “Medicated Soaps, Disinfectant Soap, Sanitary Preparations For Medical Purposes” is not entirely different from our product. In light of the common description and the phonetic similarity of the mark, which is a very strong point of objection, the mark may not be successfully argued in sole light of the difference in spelling (and appearance). Thus, it is again advised to use a different mark.

Class 3, since trademarks engaged in similar or connected trades, despite being in different classes, may also cause confusion in the mind of the ordinary public. As was held in *Corn Products Refining Co. v. Shangrila Food Products Ltd.*, AIR 1960 SC 142, and in the recent Delhi High Court case - *L'AIR Liquid Societe Georges Claude & Anr. vs M/S Liquid AIR & Ors.* The reasoning arising from 'Clean' being common to trade would also extend to Class 3.

1. **CLEANTIZ** – 'HOME CARE & HYGIENIC PRODUCTS...' – The status of this mark, filed by 'F. Joseph Jegatheesh', bearing Application Number 3859800, is registered. But the trade description, is – "Non-medicated cosmetics and toiletry preparations; Non-medicated dentifrices; Perfumery, essential oils; Bleaching preparations and other substances for laundry use; Cleaning, polishing, scouring and abrasive preparations", it is unlikely to cause a problem with registration, since the products and the class- both, are distinct.
2. **CLENETIZER** - The status of this mark, filed by 'Mascot Health Series Private Limited', bearing Application Number 4490677 is 'Objected'. Moreover, the trade description – "COSMETICS, DENTIFRICES, PERFUMERY, HAIR LOTIONS", is entirely different from our mark, and thus, is not likely to cause a problem.
3. **CLEANITIZER** – The status of this mark, filed by 'Sri Balaji Aqua Trading (P) Ltd' 4514154 is 'Objected' on usage since 30.11.2019. The objection is only under section 9 and is 'Awaiting Reply to Examination Report'. It is likely to be passed. So even if it isn't, and despite being in a separate class, if our mark is registered and usage has begins, there is a strong case opposition from the said mark. If the said mark doesn't qualify a section 9 objection, which is unlikely, we will face a passing off challenge, which, while may be dealt with on the basis of trade dress and get up, the same defences will not apply if the said mark gets registered. Thus, it is again advised to change the name of our mark.

Thus, it advised that our tradename 'CLEANTIZE' be changed, since it is highly likely that the objections raised against it would stand, and the trademark would not be registered. While the objections to section 9 under absolute grounds may be successfully argued against in light of the Trademark being an inventive word and the lack of distinctiveness of the term 'Clean', having become common to trade (relying on court pronouncements and section 17(2)(b)), the possibility of strong objections under section 11 cannot be ignored. Not only are the said

marks extremely similar, some of them have also been in prior usage. Thus, even if they aren't registered successfully, a strong case of Passing Off will be made out. While passing off may be defended on grounds of difference in get up, and trade dress, the likelihood of those tradenames not being registered is very low. Thus, it is advised that a different name be chosen, and the said name 'CLEANITIZE' be done away with.



## COMPUTER GENERATED TM-SEARCH REPORT


Search Criteria : Wordmark Search String : cle Class : 5 Search Date : 12-Aug-2020

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	Image
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2766723	5	CLEANITIZER	1873	COOPER PHARMA LTD.	PLOT NO 5, NIDHI PLAZA, II, SECOND FLOOR, LOCAL SHOPPING CENTRE, GULABI BAGH, SHAKTI NAGAR, NEW SHAKTI NAGAR, NEW DELHI-110052	Registered	
APPLICATION DATE : 02/07/2014						USER DATE : 01/06/2014	
GOODS/SERVICES : PHARMACEUTICALS							

3124486	5	Clean ticks	1953	SHUBHENDU GUPTA	325, Pratap Colony, Ruhatta, Jaunpur, Uttar Pradesh.	Accepted & Advertised	
APPLICATION DATE : 11/12/2015						USER DATE :	
GOODS/SERVICES : Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides							

3196073	5	CLEANINTES	1765	SWAPNIL BHARGAVA	SHOP NO 3, BHAD BHADA MAIN ROAD, RATIBAD, BHOPAL, MP 462044	Registered	
APPLICATION DATE : 25/02/2016						USER DATE : 24/02/2016	
GOODS/SERVICES : VETERINARY CARE PRODUCT ALSO HUMAN MEDICINE							

3557151	5	CLENTIS - CREATING HEALTHY TOMORROWS	1830	PARESH RAMNIKLAL LADHANI	7, SHRINATH ESTATE, B/H. LALJI MULJI TRANSPORT, ASLALI, AHMEDABAD - 382 425. GUJARAT. INDIA.	Registered	
APPLICATION DATE : 25/05/2017						USER DATE :	
GOODS/SERVICES : PHARMACEUTICALS, MEDICINAL AND AYURVEDIC PREPARATIONS, DIETARY SUPPLEMENTS AND NUTRITIONAL SUPPLEMENTS INCLUDED IN CLASS-05							
Vienna Code(s) : 260102, 270501, 290112							

4480339	5	CLEANWISE	---	IMPOZIO GLOBAL LLP	307, 3rd Floor, Lal Ganga Complex , G.E. Road, Raipur – 492001, Chhattisgarh	Objected	
APPLICATION DATE : 21/03/2020						USER DATE :	
GOODS/SERVICES : Alcohol-based antibacterial skin sanitizer gels							

4485573	5	cleantizer ; Wash Your hand & Kill the germs with Device	---	SYED MD.OBAIDULLAH	33/H/6,MOMINPORE ROAD,KHIDDIRPORE,KOLKATA,WEST BENGAL-700023	Objected	
APPLICATION DATE : 07/04/2020						USER DATE :	
GOODS/SERVICES : Antibacterial cleaners; Cleansing solutions for medical use; Sanitizing wipes; Hand-sanitizing preparations; Sanitizing preparations for hospital use; Cleansing solutions for medical purposes							
Vienna Code(s) : 140711, 270501, 190701, 011515, 290113							

4499912	5	CLEENTIZER	---	BHARATHI RAMESH	Integrated Global Regulatory Services, No. 222, 2nd Main Road, Subramanya Nagar, Bangalore - 560021, Karnataka	Objected	
APPLICATION DATE : 12/05/2020						USER DATE :	
GOODS/SERVICES : PHARMACEUTICALS, MEDICAL AND VETERINARY PREPARATIONS; SANITARY PREPARATIONS FOR MEDICAL							

PURPOSES; DIETETIC FOOD AND SUBSTANCES ADAPTED FOR MEDICAL OR VETERINARY USE, FOOD FOR BABIES; DIETARY SUPPLEMENTS FOR HUMANS AND ANIMALS; PLASTERS, MATERIALS FOR DRESSINGS; MATERIAL FOR STOPPING TEETH, DENTAL WAX; DISINFECTANTS; PREPARATIONS FOR DESTROYING VERMIN; FUNGICIDES, HERBICIDES

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4582984 5 CLEAN NIZE

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M/s. AGNIZE LIFE SCIENCE  
PVT. LTD.KHASRA NO.-210, RAIPUR  
INDUSTRIAL AREA,  
BHAGWANPUR, ROORKEE-  
247667, HARIDWAR  
(UTTARAKHAND).Formalities Chk  
Pass

APPLICATION DATE : 27/07/2020

USER DATE :

GOODS/SERVICES : Pharmaceutical preparations, Medicinal Preparations, Antiseptic Preparations, Anti Bacterial Preparations, Veterinary and Sanitary preparations, Disinfectants, Germicides, Air Freshening Preparations, Deodorants (other than for personal use), Medicated toiletries, Medicated talcum powder. Dietic Substance, Food Supplements.

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### COMPUTER GENERATED TM-SEARCH REPORT

Search Criteria : Wordmark      Search String : tize      Class : 5      Search Date : 12-Aug-2020

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	Image
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4491747	5	KLENITIZE	1954	NURTURE AQUA TECHNOLOGY PRIVATE LIMITED	401-402 B, SAPPHIRE CORNER OF S.V. ROAD & 1ST ROAD, KHAR (WEST), MUMBAI- 400052, MAHARASHTRA, INDIA	Accepted & Advertised	
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APPLICATION DATE : 26/04/2020

USER DATE :

GOODS/SERVICES : MEDICATED SOAPS, DISINFECTANT SOAP, SANITARY PREPARATIONS FOR MEDICAL PURPOSES

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[Class Details](#) | [Well Known Marks](#) | [Prohibited Marks](#) | [Vienna Code Classification](#) | [International Non-Proprietary Names\(INN\)](#) | [Help](#)

### COMPUTER GENERATED TM-SEARCH REPORT

Search Criteria : Wordmark Search String : tiz Class : 3 Search Date : 12-Aug-2020

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	Image
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3859800	3	CLEANTIZ - HOME CARE & HYGIENIC PRODUCTS...	1860	F. JOSEPH JEGATHEESH	PLOT NO.5690, TNHB, AYAPAKKAM, CHENNAI - 600077	Registered	
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APPLICATION DATE : 14/06/2018

GOODS/SERVICES : Non-medicated cosmetics and toiletry preparations; Non-medicated dentifrices; Perfumery, essential oils; Bleaching preparations and other substances for laundry use; Cleaning, polishing, scouring and abrasive preparations

Vienna Code(s) : 290114, 010101, 270501, 011515

USER DATE :

4490677	3	CLENETIZER	---	MASCOT HEALTH SERIES PRIVATE LIMITED	75, 2ND FLOOR, LSC (DDA MARKET), J-BLOCK, VIKAS PURI, NEW DELHI-110018	Objected	
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APPLICATION DATE : 23/04/2020

GOODS/SERVICES : COSMETICS, DENTIFRICES, PERFUMERY, HAIR LOTIONS

USER DATE :

4514154	3	CLEANITIZER	---	SRI BALAJI AQUA TRADING (P) LTD	JEERA, 5-3-311, OPP: BUDHA BHAVAN, MG ROAD, SECUNDERABAD-500003, TELANGANA STATE, INDIA	Objected	
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APPLICATION DATE : 29/05/2020

GOODS/SERVICES : NON MEDICATED HANDWASH, HAND SANITIZER, CLEANING PREPARATIONS

Vienna Code(s) : 290114, 260101, 270501

USER DATE : 30/11/2019

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Search Criteria : Wordmark Search String : clean Class : 5 Search Date : 12-Aug-2020

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	Image
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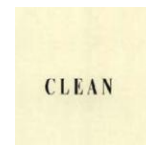
376974 5 CLEANOWELL 945 HARBHAJAN SINGH. 134,NEW MODEL TOWN,LUDHIANA-141 002. Registered  
APPLICATION DATE : 11/06/1981 USER DATE : 01/04/1976  
GOODS/SERVICES : AIR( PREPARATION FOR PURIFICATION OF) AND DEODORANTS.

484652 5 CLEAN - O - SUP ER 1223 DR. NETRA BHUSHAN GUPTA GUPTA MARKET, SAMEPUR, DELHI-110042. Registered  
APPLICATION DATE : 25/01/1988 USER DATE : 19/08/1985  
GOODS/SERVICES : AYURVEDIC MEDICINES.

634990 5 CLEANTRACT 1327 TABLETS (INDIA) LIMITED NO. 179, T. H. ROAD, CHENNAI - 600 081. Registered  
APPLICATION DATE : 26/07/1994 USER DATE :  
GOODS/SERVICES : PHARMACEUTICAL PREPARATION FOR HUMAN USE.

853164 5 CLEANDRUFF 1339 OMEGA REMEDIES PVT. LTD. NEAR M. I. T. C., WORK SHOP, MEERUT ROAD, KARNAL - 132 001. Registered  
APPLICATION DATE : 26/04/1999 USER DATE :  
GOODS/SERVICES : PHARMACEUTICAL AND MEDICINAL PREPARATIONS INCLUDED IN CLASS 5.

920519 5 CLEAN 1377 CADILA PHARMACEUTICALS LTD. IRM HOUSE, OFF C. G. ROAD, NEAR KALPANA SOCIETY, NAVRANGPURA, AHMEDABAD - 380 009, GUJARAT. Registered  
APPLICATION DATE : 25/04/2000 USER DATE :  
GOODS/SERVICES : PHARMACEUTICAL AND MEDICINAL PREPARATIONS  
Vienna Code(s) :



942175 5 CLEANWAT 9999 VIJAY GOYAL 112, SECTOR B, VAIBHAV NAGAR EXTENTION, KANADIA ROAD, INDORE - 452 012. Registered  
APPLICATION DATE : 25/07/2000 USER DATE : 01/04/1993  
GOODS/SERVICES : disinfectant, water purifier and pharmaceutical & chemical preparation included in class 05.

997574 5 CLEAN METRO 1297 ANIL KUMAR SHARMA. J-109, IIND DC, U.P.S.I.D., KOSI KOTAWAN, MATHURA, U.P. Registered  
APPLICATION DATE : 19/03/2001 USER DATE : 01/03/2001  
GOODS/SERVICES : PESTICIDES INCLUDING INSECTICIDES, FUNGICIDES, WEEDICIDES, HERBICIDES AND PREPARATIONS FOR KILLING WEEDS AND DESTROYING VERMINS.

1067983 5 CLEAN & CLEAR AUR MAN CHAHA VISWASH 1324 JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA, NEW BRUNSWICK, NEW JERSEY, UNITED STATES OF AMERICA. Registered  
APPLICATION DATE : 19/12/2001 USER DATE :  
GOODS/SERVICES : MEDICATED PRE-MOISTENED BLEMISH FIGHTING PADS, ACNE TREATMENT PREPARATIONS AND ASTRINGENTS INCLUDED IN CLASS 5.

1067984 5 CLEAN & CLEAR 1324 JOHNSON & JOHNSON ONE JOHNSON & JOHNSON Registered

PLAZA, NEW BRUNSWICK,  
NEW JERSEY, UNITED  
STATES OF AMERICA.

APPLICATION DATE : 19/12/2001

USER DATE :

GOODS/SERVICES : MEDICATED PRE-MOISTENED BLEMISH FIGHTING PADS, ACNE TREATMENT PREPARATIONS AND ASTRINGENTS.

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1140085	5	CLEANOMARK	9999	WINGS PHARMACEUTICALS PVT. LTD.	J - 13, UDYOG NAGAR, PEERAGARHI, ROHTAK ROAD, NEW DELHI - 110 041.	Registered
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APPLICATION DATE : 01/10/2002

USER DATE :

GOODS/SERVICES : PHARMACEUTICAL PREPARATIONS.

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