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TRADEMARK INFRINGEMENT AND FAKE BRANDS

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Abstract

Trademark infringement and counterfeit branding raise interconnected questions of proprietary protection, consumer deception and market governance. This article critically examines the Indian legal response to fake brands through doctrinal analysis of the Trade Marks Act, 1999, judicial decisions, intermediary liability, consumer protection and border enforcement. It distinguishes counterfeit goods from deceptively similar marks, passing off, trade dress imitation and legitimate resale, arguing that conceptual precision is indispensable to proportionate enforcement. Indian law supplies substantial remedial powers but distributes responsibility across institutions whose functions do not automatically align, and judicial approaches to resemblance, goodwill and intermediaries show the need for evidence-sensitive adjudication. The article proposes a coordinated framework centred on seller traceability, reliable evidence preservation, differentiated responses to repeated infringement and accessible consumer redress. It concludes that trademark protection should target dishonest commercial appropriation without becoming unrestricted control over descriptive language, genuine goods or lawful competition.

Keywords: *Trademark Infringement; Counterfeit Goods; Passing Off; Intermediary Liability; Consumer Protection; Trade Dress.*

1. Introduction

Trademarks connect commercial identity with consumer expectations. Beyond the exclusivity they confer on enterprises, they enable purchasers to distinguish commercial sources and reduce the costs of evaluating unfamiliar products. Landes and Posner explain trademark protection through consumer search costs and incentives to maintain consistent quality.[1] Counterfeit branding undermines this informational function by appropriating the appearance of authenticity without the production standards, accountability or assurances of the genuine source. The problem is therefore not reducible to competition between two traders over an attractive sign.

The scale of the problem requires careful qualification. The OECD–EUIPO report *Mapping Global Trade in Fakes 2025* estimates that international trade in counterfeit and pirated goods reached approximately US$467 billion in 2021, equivalent to 2.3 per cent of global imports.[2] These are estimates of international trade derived from customs seizure data, not a measure of India's counterfeit market, but they supply a defensible basis for treating counterfeiting as a substantial governance concern rather than an isolated commercial irregularity.

The expression "fake brands" can obscure important legal distinctions. A product bearing an unauthorised reproduction of another's mark raises a different question from one incorporating a common descriptive word, and genuine goods sold outside an authorised distribution network cannot automatically be equated with counterfeit merchandise. The Trade Marks Act, 1999 accommodates both proprietary protection and its limits; its infringement, passing-off and criminal provisions perform distinct functions.[3]

This article asks how those categories should be distinguished, whether the remedial architecture responds coherently to contemporary distribution practices, and which reforms would improve enforcement without suppressing legitimate competition. Its central argument is that India requires neither indiscriminate expansion of trademark exclusivity nor presumptive immunity for intermediaries, but precise identification of actionable conduct combined with traceable supply chains, procedurally sound intervention and consumer-facing remedies.

2. Research Methodology and Literature Context

The study adopts a doctrinal methodology, combining statutory interpretation with critical examination of judicial reasoning. Primary materials comprise Indian legislation, subordinate rules, reported judgments and international instruments; secondary materials supply theory and context. The analysis distinguishes binding statutory obligations, case-specific judicial directions and the article's own reform proposals.

The economic account associates trademark protection with reliable market information, while scholarship on digital intermediaries examines platform responsibility, as in Panwar and Gehlot's discussion of *Christian Louboutin SAS v Nakul Bajaj*.[4] This article connects the two through a differentiated account of infringement, enforcement and legitimate resale.

The research is not an empirical evaluation of prosecution rates, consumer behaviour or platform performance; its findings concern the coherence and limits of legal mechanisms. The law is stated as at 12 November 2026, and measures with a later commencement date are distinguished from operative law.

3. Conceptual Framework: Infringement, Counterfeiting and Passing Off

Counterfeiting is a specific form of commercial appropriation, not a synonym for every trademark dispute. The TRIPS Agreement defines counterfeit trademark goods by reference to unauthorised marks identical or essentially indistinguishable from a validly registered mark for the same goods, where import-country law is infringed.[5] Ordinary infringement is potentially broader, since deceptive resemblance may suffice without precise reproduction; conversely,

[1] William M Landes and Richard A Posner, 'Trademark Law: An Economic Perspective' (1987) 30 *Journal of Law and Economics* 265. Berkman Klein Center

[2] OECD and European Union Intellectual Property Office, *Mapping Global Trade in Fakes 2025: Global Trends and Enforcement Challenges* (OECD Publishing 2025), ch 2. OECD

[3] Trade Marks Act 1999, ss 27–30 and 102–105. IP India

[4] Aklovya Panwar and Ashwini Gehlot, 'Intermediary Liability for Trade Mark Infringement in India: The Louboutin Case' (2020) 15 *Journal of Intellectual Property Law & Practice* 150. OUP Academic

[5] Agreement on Trade-Related Aspects of Intellectual Property Rights (15 April 1994) ('TRIPS'), art 51, fn 14(a). World Trade Organization

visual resemblance alone does not dispense with the statutory conditions of the particular claim.

Passing off protects commercial goodwill against actionable misrepresentation. Section 27 preserves this remedy despite the absence of registration, while generally excluding statutory infringement proceedings for an unregistered mark.[6] A claimant must establish goodwill, a misleading representation and resulting or probable damage. An enterprise cannot replace deficient proof of goodwill with an assertion that a competitor's product merely appears imitative.

Trade dress concerns the distinctive presentation of goods, including combinations of packaging, colours, configuration and other visual elements. Protection depends on their significance as indicators of origin, not on an abstract entitlement to attractive presentation.[7] An ordinary colour or functional packaging feature should not become private property merely because a successful trader uses it; the question is whether the protected combination, in its commercial setting, conveys a misleading association or falls within a valid registration.

Genuine resale requires separate treatment. In *Kapil Wadhwa v Samsung Electronics Co Ltd*, the Delhi High Court interpreted section 30(3) in favour of international exhaustion, while recognising the relevance of section 30(4) and appropriate disclosures.[8] The decision shows why unauthorised distribution and counterfeit manufacture are not interchangeable: authenticity concerns whether goods originate from the genuine producer, whereas authorisation concerns the seller's relationship with that producer. Trademark enforcement should not become a general instrument for controlling secondary markets.

4. The Indian Statutory Framework

A. Registered Rights and Actionable Use

Section 28 confers exclusive rights arising from valid registration, subject to the Act and the registration's conditions. Section 31 makes registration prima facie evidence of validity, not an irrebuttable determination.[9] Registration is an important foundation but does not eliminate questions of scope, statutory limitations or competing rights.

Section 29 differentiates several forms of infringement. Subsections (1) and (2) address specified uses of identical or deceptively similar marks, including combinations of similarity between marks and goods or services, and under subsection (3) confusion is presumed in the double-identity situation in subsection (2)(c).[10] No single undifferentiated test therefore governs all disputes: courts must identify the applicable statutory route before determining what the claimant must show.

Section 29(4) concerns use for dissimilar goods or services and requires, among other conditions, reputation in India and use without due cause that takes unfair advantage of, or harms, the mark's distinctive character or repute.[11] Protection beyond the original product category is therefore conditional. Subsections (6)–(9) extend the analysis to affixing marks, offering goods, importation, packaging materials and advertising,[12] so liability is not confined to the factory that physically produces the counterfeit article.

B. Limitations and Civil Remedies

The statutory limitations are integral to trademark protection. Section 30 accommodates specified honest uses and legitimate dealings, section 34 safeguards qualifying prior use, and section 17 limits claims to exclusive rights over non-distinctive or common components of composite registrations.[13] Courts must distinguish appropriation of protected commercial identity from ordinary descriptive communication; an enforcement policy ignoring these limits would protect market power rather than the legally recognised trademark interest.

Section 134 regulates the forum for infringement and passing-off proceedings. Its additional plaintiff-based jurisdiction attaches to the registered-rights categories in subsection (1)(a) and (b), not to every passing-off claim.[14] Jurisdiction must therefore be

[6] Trade Marks Act 1999, s 27; *Toyota Jidosha Kabushiki Kaisha v Prius Auto Industries Ltd* (2018) 2 SCC 1 [21]–[22]. Indian Kanoon
[7] Trade Marks Act 1999, ss 2(1)(m), 2(1)(zb), 9(3) and 27(2); see also *Parle Products (P) Ltd v JP & Co Mysore* (1972) 1 SCC 618.
[8] *Kapil Wadhwa v Samsung Electronics Co Ltd*, FAO(OS) 93/2012 (Delhi High Court, 3 October 2012) [71]–[76]; Trade Marks Act 1999, ss 30(3)–(4). Indian Kanoon
[9] Trade Marks Act 1999, ss 28 and 31.
[10] Trade Marks Act 1999, ss 29(1)–(3). Indian Kanoon
[11] Trade Marks Act 1999, s 29(4).
[12] Trade Marks Act 1999, ss 29(6)–(9).
[13] Trade Marks Act 1999, ss 17(2), 30 and 34. Indian Kanoon
[14] Trade Marks Act 1999, ss 134(1)–(2).

assessed against the actual cause of action, since treating all branding disputes alike can produce procedural errors before the merits are reached.

Under section 135, relief includes injunctions and, at the claimant's option, damages or an account of profits, together with delivery-up orders. Interlocutory measures may address discovery, preservation of evidence and protection against asset dissipation.[15] These remedies serve distinct purposes; damages and an account are alternatives, not cumulative recoveries, and an allegation of counterfeiting cannot by itself justify an unsupported monetary award.

C. Criminal Liability and Procedural Safeguards

Section 102 addresses falsifying and falsely applying trademarks; sections 103 and 104 penalise specified conduct involving false marks and related sales. Ordinary punishment ranges from six months to three years' imprisonment and fines from ₹50,000 to ₹2 lakh, subject to statutory defences and the judicial power to impose lower minima for adequate and special reasons.[16] Section 105 provides enhanced punishment after qualifying subsequent convictions. Criminal liability must be established through the elements of the relevant offence; it does not follow mechanically from a civil finding of similarity.

A prosecution of a retailer who bought apparently genuine stock from an identifiable wholesaler, for example, raises different evidentiary questions from one against the manufacturer of deliberately falsified labels. Effective prosecution must connect the goods to the alleged act of manufacture, application, distribution or sale, and address the applicable defence rather than rely on the proprietor's assertion of ownership.

Section 115 makes offences under sections 103–105 cognizable and specifies conditions for warrantless search and seizure by a police officer of the prescribed rank. The proviso requires obtaining and abiding by the Registrar's opinion on the trademark-related facts.[17] Rule 114 of the Trade Marks Rules, 2017 provides for that opinion within seven working days of the written reference.[18] This framework combines effective investigation with specialised scrutiny; the reform objective is timely, accountable coordination, not elimination of safeguards.

5. Judicial Interpretation and the Limits of Exclusivity

In *Parle Products (P) Ltd v JP & Co Mysore*, the Supreme Court rejected an excessively meticulous comparison of competing biscuit wrappers, focusing instead on their broad and essential features and the overall impression likely to affect an ordinary purchaser.[19] Consumer confusion cannot be evaluated as if every buyer conducts a simultaneous forensic inspection, so minor differences may coexist with deceptive overall resemblance. The case does not, however, establish that shared design conventions invariably prove infringement; the legally significant impression must still be demonstrated.

Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd emphasised a contextual assessment of deceptive similarity, considering the marks, goods, purchasers and surrounding circumstances, and recognised the particular seriousness of confusion involving medicinal products, which bears on the intensity of scrutiny.[20] A sound application of *Cadila* must nevertheless distinguish trademark confusion from findings about a product's composition or safety: an objectionable name may create serious risk of mistaken purchasing even where the medicine is lawfully manufactured, and an unsafe product is not a trademark counterfeit solely because it is dangerous.

Midas Hygiene Industries (P) Ltd v Sudhir Bhatia establishes that mere delay does not ordinarily defeat injunctive protection where infringement and dishonest adoption are prima facie demonstrated,[21] particularly where a defendant tries to convert the duration of unlawful conduct into an equitable entitlement to continue. The principle is not an automatic-injunction formula: the underlying right and actionable conduct must still be established, and courts are not authorised to presume infringement whenever a commercially stronger claimant alleges copying.

In *Toyota Jidosha Kabushiki Kaisha v Prius Auto Industries Ltd*, the Supreme Court required adequate proof of goodwill or reputation in India at the relevant time for the passing-off claim concerning "Prius";

[15] Trade Marks Act 1999, ss 135(1)–(3). IP India
[16] Trade Marks Act 1999, ss 102–105. The provisos to sections 103 and 104 permit sentences below the prescribed minima for adequate and special reasons recorded in the judgment. India Code
[17] Trade Marks Act 1999, ss 115(3)–(5). IP India
[18] Trade Marks Rules 2017, r 114.
[19] *Parle Products* (n 7). Indian Kanoon
[20] *Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd* (2001) 5 SCC 73. Indian Kanoon
[21] *Midas Hygiene Industries (P) Ltd v Sudhir Bhatia* (2004) 3 SCC 90 [5]–[6]. Indian Kanoon

international recognition was not sufficient by itself.[22] Global commercial prominence cannot displace domestic evidentiary requirements: reputation must be proved in relation to the legally relevant audience, territory and period, and an internet reference cannot automatically establish how consumers understood a sign when the competing trader began use.

Pernod Ricard India Private Limited v Karanveer Singh Chhabra reconciles holistic comparison with attention to dominant features, while cautioning against exclusive claims over common or descriptive elements.[23] The Supreme Court dismissed the appeal concerning interim relief and expressly confined its observations to that interlocutory stage, so the decision should not be cited as a final determination of the underlying suit. It reinforces a balanced approach: prominence may help explain consumer perception, but extracting one weak component from a composite mark can distort the comparison.

Read together, these authorities are not a catalogue of findings that every defendant marketed fake goods; they address different causes of action and procedural settings. Their combined contribution is a sequence of inquiry: identify the protected interest, determine the relevant consumer perspective, evaluate the alleged representation and consider the appropriate remedy. This reconciles *Parle's* concern with misleading overall resemblance and *Pernod Ricard's* resistance to monopolising weak components: holistic comparison protects distinctive combinations, not every constituent feature.

6. Counterfeit Branding in Digital Marketplaces

Digital commerce separates the presentation of goods from physical inspection and distributes transactional functions among sellers, platforms and logistics providers. OECD–EUIPO research identifies e-commerce and evolving distribution practices as important features of contemporary counterfeit trade.[24] Intermediation is not, however, proof of complicity: the issue is which actor performed, controlled or knowingly facilitated the conduct alleged, and what enforceable obligation attached to it.

Section 79 of the Information Technology Act, 2000 provides conditional protection concerning third-party information, depending on the statutory requirements relating to intermediary functions, due diligence and disqualifying conduct.[25] Safe harbour is neither universal immunity for everything a platform does nor a freestanding cause of action against it; a platform's own representations and conduct require separate analysis, and failure to establish immunity does not by itself prove infringement.

In *Christian Louboutin SAS v Nakul Bajaj*, the Delhi High Court examined the platform's commercial involvement and representations concerning luxury products, rather than accepting its description of itself as a neutral intermediary, and issued directions on seller identification, authenticity assurances and responses to counterfeit listings.[26] These were directions within a particular factual dispute, not a declaration that every marketplace must obtain a proprietor's permission for every genuine resale; their enduring value lies in examining how the platform presents and participates in the transaction.

The Division Bench's decision in *Amazon Seller Services Pvt Ltd v Amway India Enterprises Pvt Ltd* supplies an important qualification. It noted appellate disapproval of the reasoning in *Louboutin*, rejected sweeping interim conclusions about value-added services, and recognised that packaging and shipping did not necessarily eliminate section 79 protection.[27] The preferable synthesis is functional and evidence-sensitive: courts should examine the specific representation, transaction and involvement alleged, rather than classify a business as simply "active" or "passive".

Evidence preservation is equally important. Listings, seller identifiers, invoices, payment records and product samples should be connected through a verifiable transaction history, and electronic material must satisfy the applicable evidentiary requirements, including sections 61–63 of the Bharatiya Sakshya Adhiniyam, 2023 where it governs the proceedings.[28] A screenshot may show what was displayed, but identifying the seller, proving supply and assessing

[22] *Toyota Jidosha Kabushiki Kaisha* (n 6) [28]–[33].
[23] *Pernod Ricard India Private Limited v Karanveer Singh Chhabra* 2025 INSC 981 [32]–[35], [57]–[58]. Sci API
[24] OECD and European Union Intellectual Property Office (n 2). OECD
[25] Information Technology Act 2000, s 79; *Amazon Seller Services Pvt Ltd v Amway India Enterprises Pvt Ltd*, FAO(OS) 133/2019 and connected appeals (Delhi High Court, 31 January 2020) [122]–[124]. UNODC SHERLOC
[26] *Christian Louboutin SAS v Nakul Bajaj* 2018 SCC OnLine Del 12215 [81]–[82]. Indian Kanoon
[27] *Amazon Seller Services* (n 25) [122]–[126]. Indian Kanoon
[28] Bharatiya Sakshya Adhiniyam 2023, ss 61–63; see also s 170(2), concerning proceedings preserved under the repealed Indian Evidence Act 1872. India Code

authenticity may need further evidence, and removing a listing should not mean destroying the underlying records.

A defensible platform process should distinguish unmistakable counterfeits, contested similarity claims and genuine-resale disputes. Notices should identify the right, the listing and supporting evidence, and responses should be reasoned and reviewable, enabling rapid action without making an unsupported complaint a conclusive determination of liability. Judicial evidence-preservation powers offer an existing foundation for targeted orders where voluntary cooperation is insufficient.[29]

For persistent counterfeiting, the preventive unit should be the verified commercial actor rather than a single disposable listing. Linking accounts should require reliable identifiers and human review where sanctions materially affect livelihood: common addresses, shared fulfilment arrangements or similar trading names should not alone establish common control.

7. Enforcement, Consumer Protection and Border Measures

Trademark remedies primarily address the proprietor's entitlement, whereas a purchaser requires recovery, replacement or compensation. The Consumer Protection Act, 2019 recognises spurious goods and treats their manufacture or sale as an unfair trade practice; it provides consumer redress and, under section 20, regulatory powers concerning unsafe goods, reimbursement and unfair practices, subject to statutory conditions.[30] Restraining future infringement does not necessarily repair the individual consumer's loss.

The Consumer Protection (E-Commerce) Rules, 2020 require relevant seller disclosures and provide obligations concerning returns and refunds for spurious goods. Rule 5(5) requires reasonable efforts to maintain identifying information about sellers repeatedly offering goods previously removed under specified legislation, but does not itself mandate terminating those sellers.[31] Stronger repeat-infringer controls should therefore be described as proposed improvements, not as an existing automatic statutory ban.

Responsibility also differs between marketplace and inventory models. Rule 7(5) provides that an inventory e-commerce entity which expressly or implicitly vouches for authenticity bears appropriate liability in proceedings concerning that authenticity.[32] Responsibility thus follows the assurance actually made, and consumers should be able to identify who promises genuineness and against whom that promise can be enforced.

The 2026 amendments introduce further transparency requirements, including clearer identification of sponsored listings and seller names on invoices. However, the notification dated 9 September 2026 specifies commencement on 1 January 2027,[33] so as at this article's reference date the changes are prospective, and whether greater visibility improves counterfeit detection remains an empirical question.

At the border, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 enable rights holders to seek customs intervention and provide for suspension of clearance in specified circumstances.[34] Such intervention can prevent distribution before consumers are exposed, but a suspicion-based detention must not be represented as a final finding of infringement. The rules include procedural requirements concerning participation, security and release, reflecting the commercial consequences of mistaken detention.[35]

An integrated enforcement strategy should connect the different remedial purposes rather than assume that one proceeding resolves them all: customs action may interrupt a consignment, civil proceedings may restrain a trader, criminal proceedings may address culpable conduct, and consumer proceedings may repair individual loss. Coordination should preserve these distinct legal thresholds and should not transform one authority's provisional suspicion into another's conclusive proof.

8. International Standards and Comparative Perspective

[29] Trade Marks Act 1999, s 135(2).
[30] Consumer Protection Act 2019, ss 2(43), 2(47)(vi), 20 and 39. Consumer Affairs
[31] Consumer Protection (E-Commerce) Rules 2020, rr 5(2), 5(3), 5(5) and 6(3). Consumer Affairs
[32] Ibid, r 7(5). Consumer Affairs
[33] Consumer Protection (E-Commerce) (Amendment) Rules 2026, GSR 789(E), 9 September 2026, rr 1(2) and 3. Commencement: 1 January 2027. Consumer Affairs
[34] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007, Notification No 47/2007-Customs (NT), 8 May 2007, rr 3–7. India Code
[35] Ibid, rr 5 and 7.

TRIPS combines effective enforcement with safeguards against its misuse. Article 41 requires enforcement procedures capable of effective action while avoiding barriers to legitimate trade; article 51 addresses border procedures for specified counterfeit and pirated imports; and article 61 requires criminal procedures at least for wilful commercial-scale trademark counterfeiting and copyright piracy.[36] These obligations support deterrence without requiring the criminalisation of every arguable similarity dispute.

The Agreement also recognises procedural protection through provisions concerning security, review and compensation for wrongful measures.[37] The framework is therefore not simply one of stronger proprietary powers: it requires attention to the costs imposed on traders wrongly restrained before the merits are determined. Effective enforcement and procedural fairness are mutually supporting requirements.

The European Union's Digital Services Act offers a useful comparative emphasis on trader traceability and on organising online marketplaces to facilitate compliance.[38] Its significance for India is conceptual rather than binding: reliable seller information can be treated as part of the infrastructure of accountability, not collected only after litigation begins. Any adaptation should reflect domestic statutory powers, privacy protections and the compliance capacity of smaller businesses, and should not assume that marketplaces can conclusively adjudicate every disputed trademark claim.

9. Critical Findings and Recommendations

The analysis supports three connected findings. First, the principal doctrinal danger is conflation: counterfeit manufacture, deceptive similarity and genuine resale cannot be addressed through identical presumptions. Secondly, enforcement effectiveness depends on preserving the connections between goods, representations and responsible persons. Thirdly, the availability of multiple remedies does not ensure coordination between them.

Reform should begin with implementation. Police–Registry referrals should be tracked against the existing timetable, and specialised training should address authenticity, statutory defences and evidentiary preservation.[39] Platforms should implement proportionate seller-verification and repeat-infringer procedures, with reasons, review mechanisms and safeguards against mistaken account linkage. Existing record-maintenance duties provide a starting point, not a substitute for procedural design.[40]

Courts should favour precisely framed orders identifying the prohibited conduct, relevant listings and records to be preserved. Genuine resale and descriptive use should remain protected, while groundless enforcement threats should receive appropriate scrutiny under section 142.[41] Consumers should have intelligible routes to refunds and compensation independent of whether a proprietor chooses to litigate.

Finally, enforcement agencies should publish anonymised outcome data distinguishing allegations, seizures, confirmed infringements, prosecutions and consumer recoveries. This is a proposed accountability measure, not a description of an existing unified database; it would make future evaluations testable and prevent complaints or takedowns from being mistaken for proof of accurate enforcement.

Evaluation should also record successful challenges to seizures, restored listings and the time taken to refund consumers, testing both under- and over-enforcement. Removing many listings while repeatedly disabling legitimate traders is not effective, and seller verification is inadequate if the information cannot be used to locate a trader or secure practical redress.

10. Conclusion

Trademark infringement and fake brands require a differentiated legal response that protects commercial identity without insulating established enterprises from lawful competition. India's framework contains substantial civil, criminal, regulatory and border mechanisms; the challenge is their coherent application to distinct forms of misconduct and dispersed commercial responsibility. A sustainable strategy should combine prompt action against demonstrable counterfeiting with seller traceability, preserved evidence, accessible consumer remedies and

[36] TRIPS (n 5), arts 41, 51 and 61.
[37] Ibid, arts 48, 50, 53 and 56. World Trade Organization
[38] Regulation (EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act) [2022] OJ L277/1, arts 30–31. EUR-Lex
[39] Trade Marks Rules 2017, r 114.
[40] Consumer Protection (E-Commerce) Rules 2020, r 5(5).
[41] Trade Marks Act 1999, ss 30 and 142. IP India

meaningful review of coercive measures. The objective is not the widest possible trademark monopoly but a trustworthy marketplace in which authenticity can be established, responsibility allocated and legitimate trade preserved.

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