

SOUTH AFRICA / JUDGMENT

Idexis (Pty) Ltd t/a Sentra Pharmacy and Another v Novo Nordisk (Pty) Ltd (130119/2024) [2025] ZAGPPHC 393 (8 April 2025)

[2025] ZAGPPHC 393

COURT

North Gauteng High Court, Pretoria

BEFORE

Retief

CASE / FILE NUMBER

130119/2024

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IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)

Case No: 130119/2024

(1) REPORTABLE: no

(2) OF INTEREST TO

OTHER JUDGES: no

(3) REVISED: yes

In the matter between:

IDEXIS
(PTY) LTD t/a SENTRA PHARMACY
First Applicant
DR
RUAAN LOUW
Second Applicant
and
NOVO
NORDISK (PTY) LTD
Respondent

In Re:

NOVO
NORDISK (PTY) LTD
Applicant
And
IDEXIS
(PTY) LTD t/a SENTRA PHARMACY
First Respondent
DR
RUAAN LOUW
Second Respondent
THE
SOUTH AFRICAN HEALTH PRODUCTS
Third Respondent
REGULATORY AUTHORITY
THE
SOUTH AFRICAN PHARMACY COUNCIL Fourth
Respondent
This
judgment is prepared and authored by the Judge whose name is
reflected as such and is handed down electronically by circulation
to the parties / their legal representatives by email and by
uploading it to the electronic file of this matter on
CaseLines.
The date for handing down is deemed to be 8 April 2025.

JUDGMENT

RETIEF J

INTRODUCTION

- [1] In November 2024 Novo Nordisk (Pty) Ltd [Novo] brought an urgent application for an interim interdict against both iDexis (Pty) Ltd t/a Sentra Pharmacy [iDexis] and Dr Ruaan Louw [Dr Louw] in which it sought to interdict both of them from, inter alia, manufacturing, supplying and marketing medicine containing semaglutide. The interim relief was sought pending the outcome of an investigation by the South African Health Products Regulatory Authority [SAHPRA] and the South African Pharmacy Council [SAPC] into the manufacturing and supply of the medicines containing semaglutide and, failing a decision subsequent upon such an investigation within 6 (six) months of the order, final relief is sought [main application].
- [2] iDexis opposes the relief. The pleadings have not closed in the main application. iDexis has filed two interlocutory applications and an answering affidavit albeit, forewarning Novo that it intends to supplement its filed papers.[1] The application before this Court is one of the interlocutory applications brought by iDexis and Dr Louw [collectively iDexis]. In this interlocutory application, iDexis, inter alia, seeks to compel Novo to deliver documents in terms of its rule 35(12), (13),(14) and (15) notice [rule 35 notice] in terms of rule 30A and, that

this Court should, in terms of rule 35(13), direct that discovery shall apply to the main action [amended relief]. The amended relief is sought instead of the relief, as set out, in the notice of motion. The amendment was moved during oral argument and was not opposed. It is noted that iDexis in the amended relief does not seek for the stay of the main application pending compliance of the amended relief, if granted. The Court considers the amended relief as against the papers filed. This includes the basis upon which iDexis seeks condonation in amended prayer 1.

- [3] iDexis' Counsel at the date of the hearing further confined the basis upon which the compel to deliver documents is to be sought. The amended relief was based on compliance of 35(12) in respect of the documents at paragraphs 1, 2, 15- 19 in terms of the rule 35 notice and delivery of documents in terms of rule 35(14) and general discovery, ostensibly rule 35(1) for documents at paragraphs 1, 2, 3,

15, 16, 17, 18 and 19.

- [4] It is common cause that Novo has filed a formal reply to the rule 35 notice, has delivered the documents 13 and 14 of the rule 35 notice and, that iDexis before initiating this application did not file a rule 30A notice. In consequence, the unamended relief attracted a rule 30 notice response from Novo who, contended that this application constituted an irregular step, the basis was set out in the notice. Novo does did not wish to pursue the rule 30 notice but rather deals with the procedural steps taken by iDexis in its answering affidavit and requests this Court in argument, to consider the rule 30 notice as a factor in the cost argument.

- [5] Novo too, raises two preliminary objections in its answer which will be dealt with in the body of this judgment as the reasons and reasoning unfolds. To commence, iDexis contends that the necessity for the amended relief was triggered by Novo's inadequate response to the rule 35 notice. Novo conversely contends that it adequately responded to the rule 35 notice having regard to the content thereof and therefore, that it does not need to deliver any or more documents as sought, and that this application is simply

brought to delay the adjudication of the main application and is an abuse of process.

- [6] The procedural spat between the parties must be viewed as against the procedural steps taken. Although the merits of the matter do not form part of the amended relief a basic understanding is imperative to contextualise the procedural steps.

BASIC BACKGROUND AND MATERIAL PROCEDURAL STEPS

- [7] The SAHPRA has registered only one product which contains semaglutide, this is called Ozempic. Ozempic is registered in South Africa for the treatment of adults with type-2 diabetes and for the use in reduction of risk of cardiovascular events such as heart attacks, stroke, or death in adults who suffer from type-2 diabetes with heart disease. Novo is the authorized importer and distributor in South Africa of the medicine Ozempic which is the only registered medicine in South Africa containing the active pharmaceutical ingredient

semaglutide.

- [8] However other than the registered use of semaglutide it has been shown to have significant weight loss benefits, so much so that its developer and patent holder, Novo Nordisk A/S [Novo Denmark] is alleged to have developed another semaglutide containing product called Wegovy. Wegovy is registered in the United States with the Food and Drug Administration and in Europe with the European Medicine Agency for the use of chronic weight management and/or management of chronic obesity. Novo has applied for the registration of Wegovy with the SAHPRA, which application remains pending.
- [9] Since Ozempic is not registered in South Africa for chronic weight management, there is presently no semaglutide-containing product registered with the SAHPRA for use in weight management.
- [10] In May 2024, Novo became aware of iDexis manufacturing, marketing and distributing a compounded medicine for chronic weight management purporting to contain a semaglutide base [iDexis product]. From May 2024 to the 12 November 2024, Novo demanded iDexis to desist with what it deemed was a contravention, it informed the SAHPRA and SAPC of the complaint and, called on both SAHPRA and SAPC to investigate iDexis' activities. Novo's contention and basis for its complaint is refuted by iDexis. In consequence, Novo seeks the interim relief in the main application pending, inter alia, an investigation by the SAHPRA and SAPC of its complaint.
- [11] On the 13 November 2024, instituted the main application on an urgent basis. The notice of motion indicated that the application was to be heard on Tuesday, 10 December 2024. Confusingly though, the dies which allowed iDexis to file its answering affidavit, if opposed, would have been the 10 December 2024, ostensibly by close of business, on the day the matter was to be heard. An initial delay appeared inevitable.
- [12] iDexis did oppose the main application on the 19 November 2024 and filed the rule 35 notice on the 2 December
2024. On the 4 December 2024, Novo approached the Deputy Judge President [DJP] of this Division for urgent direction and a case management conference relying on, inter alia, dilatory delay tactics. On the 6 December 2024 Novo filed its formal reply to the rule 35 notice. On the 10 December 2024 iDexis did not file its answering affidavit, it resisted the need for a case management meeting with the DJP and on the 11 December 2024, cited a possibility of launching this application. The main application was removed from the unopposed roll.

[13] iDexis too, on the 6 January 2025 raised the possibility of launching this application. In the meantime, Novo had set the adjudication of the main application on the urgent Court roll for the 28 January 2025. On the 14 January 2025, Novo informed iDexis that it would proceed with the hearing on the 28 January 2025, absent the launching of this application. On the 22 January 2025 iDexis filed this application. Notwithstanding the amended relief, iDexis was in a position to file an answering affidavit in which it,

already at this stage, relies on a factual dispute on the material issues involving the conflicting expert opinions to be filed.

[14] On the 28 January 2025, the matter was removed from the urgent roll by agreement, as the parties case management meeting with the DJP took place on that day and, the DJP issued directives regulating the manner in which the application was to proceed.

[15] It is against this procedural background that Novo contends that the amended relief is merely a delay tactic. What Novo has lost sight of is that it was dominus and initially set the main application down for the 10 December 2024 without considering the timelines for the filing of an answer affidavit. Novo too, called for a case management meeting with the DJP, knowing full well that it had no control of when the meeting would be heard as that is determined at the behest of the DJP. In other words any delay pinned on the late launching of this application must be viewed having regard to Novo's steps regarding delay in the hearing of the main application. This will be dealt with more fully below. The consideration of a tactical delay at this stage creates an opportune

time to consider the rule 35 notice which iDexis alleges it needed to file its answering affidavit and to prepare and which Novo contends it has not made out a proper case for.

THE RULE 35 NOTICE AND DISCOVERY

[16] According to the founding papers the purpose of the application is stated by the deponent as:

"23. This is an interlocutory application brought by iDexis and I as applicants, against Novo Nordisk, as respondent, to compel the discovery on oath (own emphasis), within 20 (TWENTY) days of the granting of the relief sought in the notice of motion, if so granted, of all documents in its possession or under its control or that of its agents, as requested by iDexis and in our notice (own emphasis) in terms of rule 35(12), (13), (14) and (15) dated the 6th of December 2024 ("the respondents' Rule 35 Notice"), a copy of which is attached to the notice of motion as "ANNEXURE A"."

[17] To ascertain whether the rule 35 notice indeed achieved what iDexis under oath stated requires a closer look at the content of the notice. Novo in its response thereto indicated, inter alia, that it was confusing as no specific reference is made to the subrules upon which delivery of documents were sought. A "once

all” approach appears to have been adopted. This Court agrees with Novo in that content of the rule 35 notice is confusing and as will be demonstrated drafted without any due consideration to the wording of the provisions of the subrules relied on in rule 35. An unfortunate theme which will be demonstrated persisted with the application of rule 30A.

[18] For present purposes and to expand, ex facie, the rule 35 notice is brought in terms of subrules (12), (13), (14) and (15). In the body of the notice, the request is brought without particular reference to each subrules referred to, this causes confusion. The confusion persists when regard is had to the preamble to the notice which, simply calls upon Novo to elect and to take decisive action. The decisive action is listed in the alternative being, (a) or

(b) or (c). Ostensibly and as drafted such steps to be taken in terms all the subrules (12), (13), (14) and (15).

[19] Then, in paragraph (a) Novo is called upon to make available for inspection “documents and information (own emphasis) specified in paragraphs 1 and 20” stating that the ‘documents and information’ duly listed in paragraphs 1 and 20 are relevant to the issues in dispute and therefore it calls for the inspection of the originals or a copy thereof. No reference to clearly specified documents which are relevant are made. The wording of paragraph (a) does not accord with the clear wording of any of the subrules listed namely (12), nor (13) nor (14) nor (15).

[20] In paragraph (b), Novo is called upon to “state in writing whether it objects to the production of the documents and, if so, to provide the grounds for its objection.” Such objection appears to relate to documents and not to documents and information and is again sought without the specific wording

according with the subrules relied on, (12), (13), (14) nor (15).

[21] In paragraph (c), Novo is called upon to “state under oath that such documents do not exist, are not in their possession (own emphasis) and if not in their possession, to state their whereabouts to enable iDexis to prepare an answering affidavit.” This is called for like (b) without a call for discovery under oath of documents in possession of Novo based on rule 35(1) and once again, the wording of paragraph (c) does not clearly accord with wording of (12), (14), (13) nor (15). It is as if iDexis wants Novo to elect an option related to the documents and information called for in paragraphs 1-20 in a manner not specifically related to the Uniform rules. The preamble is confusing and is a non-compliant request in terms of rule 35.

[22] The confusion persists even further, in remainder of the rule 35 notice, in that over and above the election call in (a), or (b) or (c) iDexis calls for:

“KINDLY FURTHER TAKE NOTICE THAT the first and second respondents (iDexis and Dr Louw – own emphasis) require the following documents (own emphasis) referred to, directly or indirectly in the applicant’s founding affidavit: -“

- [23] The documents referred to are the same ‘documents and information’ referred to in the election call in (a), (b) and (c). The content of this call appears to be a general call in terms of subrule (12) relating to paragraph 1 to 20. It is not a general call for discovery of documents in possession of Novo as envisaged in terms of rule 35(1) and nor is it a call to make available documents which are clearly specified, and which are relevant to a reasonably anticipated issue in terms of rule 35(14).
- [24] The confusion and, as sought, impermissible rule 35 notice, made up the subject matter of Novo’s formal reply. From the content of the reply, Novo under the preamble general call elected to object (option (b)) to the production of the documents and set out the reasons for such objection. Novo too, responded to the rule 35(12) request by delivering the documents at paragraph 13 and 14, by answering the remaining request by stating that the documents at paragraphs 1 to 5 and 8 to 20 were not referred to in the founding affidavit and that the remaining documents required at paragraph 6, 7 and 13 already formed part of the founding papers, a copy of which it contended iDexis already had.
- [25] iDexis relying on a rule 35 notice response itself, now seeks the amended relief. Not only is the content of the rule 35 notice confusing but the procedural steps taken by iDexis after the rule 35 reply is too. The amended relief is brought in terms of rule 30A in circumstances when iDexis confusingly did not plead compliance of rule 30A. iDexis does not seek condonation for such non-compliance, although forewarned it simply does not deal with it in its founding papers.
- [26] It is common cause that the amended relief is brought in terms of rule 30A. In the founding affidavit iDexis states:
- “127. Any party failing to comply with the notice (own emphasis) will be subject automatically to the provisions of Rule 30A. Rule 30A provides for a positive form of relief which aims at compelling compliance with the notice or request, and if striking out the claim or defence, as the case may be, where compliance cannot be enforced.”*
- [27] iDexis concedes that it did not deliver a rule 30A notice as required but argues that the rule 30A notice became obsolete after having received Novo’s rule 35 reply. That statement under oath is telling as logically calling for compliance (rule 30A notice) could only have become unnecessary if they believed that the rule 35 reply, received on the 6 December 2024, although on their version wholly insufficient, constituted compliance. If not then they would have viewed the wholly insufficient reply as constituting non-compliance of the rule 35 call and served the rule 30A notice soon thereafter, but they did not. Not only is the argument flawed but inconsistent with the evidence in that iDexis through its attorney on the 28 January 2025 held the view with reference to a letter dated the 8 January 2025, that they now had complied, and that Novo had received sufficient notice of 10 (ten) days and stated that:

“5. In the circumstances our client holds the view that there has been substantive compliance (own emphasis) by them with Uniform Rule 30A in circumstances where there is a pending urgent application, and that there is no merit in suggesting that there has not been compliance with Uniform Rule 30A by them.”

- [28] The allegation of substantive compliance is inconsistent with the concession of non-compliance of rule 30A under oath. Having regard to the wording of the rule 30A, iDexis has not substantially complied no matter the subjective view it holds. The objection raised by Novo on this basis based is substantively well grounded and iDexis’ evidence inconsistent.[2]
- [29] Furthermore, iDexis does not formally seek condonation in its papers to condone such non-compliance as conceded. Amended prayer 1 does not assist iDexis as condonation sought as a general relief is not competent if what is to be condoned is unclear and, if the reasons for such non-compliance are not supported by facts clearly and concisely set out in the founding papers. Again, the only condonation sought in the founding papers relates to a request in terms of rule 35(14) which can only be triggered by direction provided in terms of rule 35(13). The compel to deliver documents in prayer 2 read with prayer 1 in terms rule 35(12) fails.

Rule 35(13) in respect of the 35(14) and rule 35(1)

- [30] It is common cause that iDexis did not seek direction from the Court in terms of rule 35(13) before it served the rule 35 notice. This Court also finds, as reasoned in paragraphs [16-24], that the content of the rule 35 notice in so far as iDexis wanted to rely on 35(1) as a general call under (a) or (b) or (c) does not comply with this subrule. In consequence any compel relief based on the rule 35 notice in respect of 35(1), even if the Court directs that discovery is applicable to the main application, should not be awarded. In this

respect prayer 4 in so far as it applies to a rule 35(1) call must fail.

- [31] In respect of documents to be delivered in terms of rule 35(14) relying on a successful rule 35(13) request iDexis now, after the fact, seeks condonation. The condonation sought is in respect of 35(13) to compel the delivery of documents in the amended relief as previously stated only relates to the 35(14) call as iDexis in its founding papers states the following:

“24.1 The Court grants condonation for the delivery of the Rule 35(14)- part of the respondents’ Rule 35 notice, prior to a direction by the Court as contemplated in Rule 35(13);”

- [32] In the founding papers iDexis, states that:

“151. In order for iDexis and me to be in a position to properly answer the allegations made by Novo Nordisk, iDexis and I require certain documents referred to in Novo Nordisk’s founding affidavit (own emphasis). These documents must in terms of Rule 35 be requested in terms of subrule (14).”

- [33] Yet as the Court has explained the rule 35 notice does not call for clearly specified relevant documents as required in rule 35(14) nor are the documents sought to be delivered in amended prayer 4 all clearly specific documents. On that basis alone the relief, whether condonation is granted or not, must fail.
- [34] iDexis in its papers only seeks that discovery be directed to apply for the purpose of its rule 35(14) request and not specifically rule 35(1). However, for clarity this Court demonstrates that amended prayer 3 will also fail having regard to iDexis own papers even if, regard to fairness, equity, openness and transparency in respect of general discovery. Accepting this premise and considering what transpired in argument, the only documents requested under “general discovery” which could include the rule 35(14) request were documents under paragraphs 3, 15, 16, 17, 18 and 19. Document 3 had been delivered and none of the remaining documents called for in paragraphs 15-19 are clearly specified document in terms of rule 35(14) and as dealt with.
- [35] Furthermore, although the rule 35 notice in the heading includes a notice in terms of subrule (14), the content of the rule 35 notice discussed above,[3] does not include a call for the delivery of clearly specified documents as set out in rule 35(14). In consequence, the reliance of rule 35(14) as a fact for a Court to consider as an exceptional circumstance to trigger general discovery must surely fail on that basis alone. But what of the remaining facts relied on by iDexis relied on when applying fairness, equity, openness and transparency and can that resurrect a basis for a general call for discovery as argued? For the sake of completeness and to deal with the facts specifically dealt with in papers to weigh fairness and equity, this Court deals with the facts as pleaded under ‘exceptional circumstances’ in its founding papers.
- [36] From the founding papers under the heading “THE FOLLOWING EXCEPTIONAL CIRCUMSTANCE MITIGATE IN FAVOUR OF THE COURT FINDING THAT THE RULE 35 APPLIES TO THIS INTERLOCUTORY

APPLICATION (own emphasis)”, reference to this rule 35 applying to this application is incorrect and creates even further confusion. Although not pointed out by Counsel, it appears to be a typographical error, because what follows, and in particular after paragraph 150, are the circumstances

relied on by iDexis to constitute exceptional circumstances in respect of the rule 35 in the main application.

- [37] The first circumstance has already been dealt with, being the necessity for the 35(14) request. On the basis reasoned, it does not constitute an exceptional circumstance as it was not asked for in the rule 35 notice. A further circumstance raised is that “-there are numerous factual disputes between the parties in the main application, which require the leading of both factual and expert

opinion evidence.” This appears, at best, to be a possibility to consider as a factor and not a fact as this Court is not called to deal with the merits of the matter. In considering the factor as a possibility in favour of iDexis, reliance on the referral thereof to trial or to oral evidence as suggests that ”-in order to plead or to prepare for trial, a litigant would have at its disposal the mechanism of rule 35,-“, iDexis will have been deprived of this opportunity. However iDexis, on its own version, will not be deprived as if referral is inevitable both parties will have the luxury of discovery without the necessity of a rule 35(13) direction on application at this stage. This factor is not exceptional.

[38] Lastly, iDexis relies on the risk of the general South African public who “-are in dire need of treatment do not have access to Semaglutide medicine made available by iDexis through the iDexis product, due to the severe shortage of the supply of Ozempic in the market.” Moving from this premise, iDexis places an obligation on Novo to furnish documentary evidence that it is in a position to supply and meet the requirements of the general South African public. This is surely not a fact, but a bold statement and a call for Novo to make out a case which is not the thrust of its case in the main application. This is not an exceptional circumstance as the enquiry is not even relevant to the subject matter.

[39] A factor not raised as an exceptional circumstance but one which this Court too has considered against the backdrop of the amended relief is that iDexis has not been deprived of a rule 35(12) call which in application, without the need for rule 35(13) direction is available, and which casts a wide net for the delivery of documents. iDexis attempted to implement 35(12) whilst having employed an experienced legal team was unsuccessfully done due to confusion and an obvious inability to read, apply and to comply with the rules of Court. No exceptional circumstances have been demonstrated and prayer 2 must fail both in respect of reliance of rule 35(14) and general discovery.

COSTS

[40] Novo seeks attorney clients alternatively, costs on scale C. Punitive costs are sought by Novo on the basis that iDexis launched this application as a deliberate attempt to thwart the further progress of the main application and, on iDexis’ inability to make out a proper case. Such contends Novo is an abuse of Court process. Having regard to the procedural steps taken by both

parties it appears as if both, as reasoned, played their own part in the main application not being ripe for hearing on the 10 December

2024. Prior to the launching of this application, it was foreseeable, *ex facie*, the timelines in the notice of motion crafted by Novo that the matter could not proceed on the 10 December 2024 if opposed. Opposition was inevitable.

[41] After the 35 notice was delivered but before the delivery of this application on the 22 January 2025, Novo approached the office of the DJP requesting a case management conference. As reasoned, a date for such a meeting is not controlled by either party and is on invitation

after a request is made. Novo had set a process in motion which potentially could delay the hearing of the main application itself. This would be the case, notwithstanding that a date for further allocation for a hearing can be sought and indeed was secured being the 28 January 2025.

[42] After this application was delivered on the 22 January 2025, a meeting was held with the DJP on the 28 January

2025. The main application was removed by agreement. This must be considered together with the time it took iDexis from the 6 December 2025 when it received Novo's reply to the rule 35 notice to when it launch this application. At the time the application was delivered the 22 January 2025 the parties had not met with the DJP, nor did they know of the directives which would finally be given. The weight of an abuse of process solely at the hands of iDexis on this basis is not compelling.

[43] However, what to make of the lost opportunity by iDexis to request the delivery of the documents it required to file its answer in the rule 35 notice by not considering and applying rule 35 and 30A in terms of the provisions. Furthermore that the application was not compelling for, inter alia, want of facts in support of the amended relief. The confusion created and the inability to effectively apply the rules of Court has delayed the resolution of main application, jettisoned iDexis itself to file what it deems a final answering affidavit and wasted valuable Court recourses and time. The confusion persisted in argument and in consequence was demonstrated by the necessity to amend the relief, including iDexis need not to proceed with the stay relief. The is an abuse of process because discovery, as is the case with all litigants, was for the asking and taking, if skilfully asked and effectively applied but, it was not done by iDexis. In all likelihood, the outcome of this application will attract yet another procedural bite to correct. In consequence, chasing up more costs and delaying the resolution of interim relief in circumstances where iDexis already took up 34 pages (half of the number of pages) in its founding papers filed in this application to explain to this Court, who is not seized with the merits, that Novo has not met threshold for its urgent interdictory relief in the main application. The basis of abuse of process on this

basis, is however convincing.

[44] Having regard thereto and not viewing it in a vacuum but, considering that iDexis' Counsel in written argument did not specifically deal with the punitive costs sought nor did iDexis in reply. iDexis however, in reply simply states that the technical points raised by Novo is opportunistic and that the only abuse is in fact the exceptional delay on the part of Novo to institute the main application. The latter a consideration for the Court seized with the main application. This Court has considered all the circumstances, the relevant arguments and procedural steps taken this Court is persuaded to grant attorney client costs.

[45] The following order:

1. The application is dismissed.

2. The First and Second Applicant, iDexis (Pty) Ltd t/a Sentra Pharmacy and Dr Ruaan Louw, are ordered to pay the Respondent, Novo Nordisk (Pty) Ltd, costs on an attorney client scale, such costs to include the costs of 2(two) Counsel, if so employed.

L.A. RETIEF

Judge of the High Court Gauteng Division

Appearances:

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Date of hearing:

24 February 2024

Date of

judgment:

8 April 2025

[1] Democratic Alliance and Others v Mkhwebane and Another 2021 (3) SA 403 (SCA), par 47.

[2] Centre For Child Law v The Governing Body of Hoërskool Fochville 2016

(2) SA 121 (SCA), par 15; Kgamanyane and Another v ABSA Bank Limited 2024 JDR 0274 (CJ), par 14.

[3] Supra paras [16-24].

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