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FEDERAL TRADE COMMISSION

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEC 3
v.

FEDERAL TRADE COMMISSION,
Plaintiff,

CV 02-04566 LGB(RNPx)

ENTERED
CLERK, U. S. DISTRICT COURT
ENTERED
DEC 13 2002
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

KOMACO INTERNATIONAL, INC.,
a Nevada corporation, dba
Success Masters International
and Max Horizon Securities;

STIPULATED FINAL JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AGAINST DEFENDANTS
KOMACO INT'L, INC. AND
KENSHIN HAYASHI

ROBERT LEE ANDERSON,
individually and as an officer
of Komaco Int'l, Inc.; and

KENSHIN HAYASHI, individually
and as a principal of Komaco
Int'l, Inc.,

Defendants.

Plaintiff, the Federal Trade Commission ("Commission" or
"FTC") commenced this action by filing its Complaint for
permanent injunction and other relief pursuant to Sections 5 and
13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
§§ 45, 53(b). The Complaint alleged that Defendants had engaged
in unfair and deceptive acts or practices in violation of Section
5 of the FTC Act in connection with the sale, offering for sale,

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1 or advertisement of a work-at-home, booklet stapling opportunity.

2 Plaintiff FTC and Defendants Komaco International, Inc.
3 ("Komaco") and Kenshin Hayashi ("Hayashi"), represented by the
4 attorneys whose names appear hereafter, have agreed to the entry
5 of this Order and have requested that the Court enter the same to
6 resolve all matters in dispute in this action without trial or
7 adjudication of any issue of law or fact herein. Plaintiff and
8 Defendants Komaco and Hayashi having requested the Court to enter
9 this Order, the Court hereby finds and orders as follows:

10
11 **FINDINGS**

12 1. This Court has jurisdiction of the subject matter of
13 this case and of the parties consenting hereto;

14 2. Venue is proper as to all parties in the Central
15 District of California;

16 3. The activities of Defendants are in or affecting
17 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

18 4. The Complaint states a claim upon which relief may be
19 granted against Defendants under Sections 5 and 13(b) of the FTC
20 Act, 15 U.S.C. §§ 45(a), 53(b);

21 5. Defendants have waived all rights that may arise under
22 the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by
23 Pub. L. 104-121, 110 Stat. 847, 863-64 (1996);

24 6. Defendants have waived all rights to seek appellate
25 review or otherwise challenge or contest the validity of this
26 Order, and have further waived and released any claim they may
27

1 have against the Commission, its employees, and agents;

2 7. Defendants enter into this Order freely, without
3 admitting liability for any allegation or charge made in the
4 Commission's Complaint, without coercion, and acknowledge that
5 they understand the provisions of this Order and are prepared to
6 abide by them.

7 8. Entry of this Order is in the public interest.
8

9 **ORDER**

10 **Definitions**

11 A. "Defendants" means Defendants Komaco International,
12 Inc. and Kenshin Hayashi, and each of them by whatever name each
13 might be known.

14 B. "Work-At-Home Opportunity" means any program, plan,
15 product or service that enables a participant or purchaser to
16 earn money by working at home.

17 C. "Assisting Others" means knowingly providing any of the
18 following goods or services to another entity: (A) performing
19 customer service functions, including, but not limited to,
20 receiving or responding to consumer complaints; (B) formulating
21 or providing, or arranging for the formulation or provision of,
22 any marketing material; (C) providing names of, or assisting in
23 the generation of, potential customers; (D) hiring, recruiting or
24 training personnel; (E) advising or consulting others on the
25 commencement or management of a business venture; or (F)
26 performing marketing services of any kind.

1 I. PROHIBITED BUSINESS ACTIVITIES

2 IT IS THEREFORE ORDERED that in connection with the
3 advertising, marketing, offering for sale, licensing, sale or
4 other promotion of any Work-At-Home Opportunity, Defendants, and
5 their successors, assigns, officers, agents, directors, servants,
6 employees, salespersons, independent contractors, attorneys,
7 corporations, subsidiaries, branches or business divisions, and
8 all other persons or entities in active concert or participation
9 with them who receive actual notice of this Order by personal
10 service or otherwise, whether acting directly or through any
11 corporation, subsidiary, division, or other entity, are hereby
12 permanently restrained and enjoined from:

13 A. Falsely representing, expressly or by implication, that
14 consumers will make a substantial amount of money after sending a
15 registration fee to Defendants;

16 B. Falsely representing, expressly or by implication, that
17 Defendants will pay consumers \$5 to \$15 for every booklet
18 stapled;

19 C. Falsely representing or representing without adequate
20 substantiation, expressly or by implication, the earnings
21 potential of any Work-At-Home Opportunity being promoted;

22 D. Failing to disclose their refund policy, or lack
23 thereof, or to comply with any stated refund policy;

24 IT IS FURTHER ORDERED that Defendants, and their successors,
25 assigns, officers, agents, directors, servants, employees,
26 salespersons, independent contractors, attorneys, corporations,
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1 subsidiaries, branches or business divisions, and all other
2 persons or entities in active concert or participation with them
3 who receive actual notice of this Order by personal service or
4 otherwise, whether acting directly or through any corporation,
5 subsidiary, division, or other entity, are hereby permanently
6 restrained and enjoined from falsely representing, expressly or
7 by implication, any fact material to a consumer's decision to buy
8 or accept any good or service, in connection with the
9 advertising, marketing, promoting, telemarketing, offering for
10 sale, or sale of the good or service.

11
12 **II. MONETARY JUDGMENT**

13 **IT IS FURTHER ORDERED** that:

14 A. Judgment in the amount of \$155,724.22 (one hundred
15 fifty-five thousand, seven hundred twenty-four dollars and
16 twenty-two cents) is hereby entered in favor of the Commission,
17 jointly and severally against Defendants, for equitable monetary
18 relief and for paying any attendant expenses of administering any
19 redress fund. Defendants acknowledge and agree that this
20 judgment for equitable monetary relief is solely remedial in
21 nature and is not a fine, penalty, punitive assessment, or
22 forfeiture.

23 B. All funds paid pursuant to this Order shall be deposited
24 into a fund administered by the Commission or its agent to be
25 used for equitable relief, including but not limited to consumer
26 redress and any attendant expenses for the administration of any
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1 redress funds. In the event that direct redress to consumers is
2 wholly or partially impracticable or funds remain after redress
3 is completed, the Commission may apply any remaining funds for
4 such other equitable relief (including consumer information
5 remedies) as it determines to be reasonably related to the
6 Defendants' practices alleged in the Complaint. Any funds not
7 used for such equitable relief shall be deposited to the Treasury
8 as disgorgement. Defendants shall have no right to challenge the
9 Commission's choice of remedies or manner of distribution under
10 this Section.

11 C. The judgment shall be satisfied as follows: within five
12 (5) business days after receiving notice of the entry of this
13 Final Judgment, Defendants shall transfer certain funds (as
14 described below) in the form of a certified check, cashier's
15 check or a wire to the Commission. The funds to be transferred
16 are as follows: the sum of \$155,724.22 from Attorney Stephen H.
17 Marcus's Trust Account at First Federal Bank;

18 D. Defendants expressly waive their rights to litigate the
19 issue of disgorgement;

20 E. Defendants acknowledge and agree that all money paid
21 pursuant to this Order is irrevocably paid to the Commission for
22 purposes of settlement between Plaintiff and Defendants;

23 F. Any Fund Administrator shall destroy all records
24 relating to this matter six years after the transfer of any
25 remaining redress funds to the FTC Treasury account or the
26 closing of the account from which such funds were disbursed,
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1 whichever is earlier, provided that no records shall be destroyed
2 unless and until a representative of the FTC has received and
3 approved the administrator's final accounting report. Records
4 shall be destroyed in accordance with disposal methods and
5 procedures to be specified by the FTC. The FTC may, in its sole
6 discretion, require that such records, in whole or in part, be
7 transferred, in lieu of destruction, to the FTC.

8
9 **III. RIGHT TO REOPEN**

10 **IT IS FURTHER ORDERED** that the Commission's agreement to,
11 and the Court's approval of, this Order is expressly premised
12 upon the truthfulness, accuracy, and completeness of the
13 financial condition of Defendants Komaco and Hayashi, as
14 represented in their respective financial statements, including
15 attachments, dated June 17 and 18, 2002, their supplemental
16 responses dated July 3 and 8, 2002, and related documents, upon
17 which the Commission relied in negotiating and agreeing to the
18 terms of this Order. If, upon motion by the Commission to the
19 Court, the Court finds that a Defendant, in its above-referenced
20 financial statement and information, failed to disclose any asset
21 with a value in excess of \$1,000, materially misrepresented the
22 value of any asset, or made any other material misrepresentation
23 or omission, the Court shall enter judgment against Defendants,
24 in favor of the Commission, for \$2 million representing the
25 approximate amount of consumer injury, which will become
26 immediately due and payable, less any amount any Defendant has

1 already paid. For purposes of this Section, and any subsequent
2 proceedings to enforce payment, including but not limited to a
3 non-dischargeability complaint filed in a bankruptcy proceeding,
4 Defendants waive any right to contest any of the allegations set
5 forth in the Complaint filed in this matter or the \$2 million
6 judgment referenced above.

7
8 **IV. CUSTOMER LISTS**

9 **IT IS FURTHER ORDERED** that Defendants, as well as their
10 successors, assigns, officers, agents, directors, servants,
11 employees, salespersons, independent contractors, corporations,
12 subsidiaries, branches or business divisions, and all other
13 persons or entities in active concert or participation with them
14 who receive actual notice of this Order by personal service or
15 otherwise, whether acting directly or through any corporation,
16 subsidiary, division, or other entity, are permanently restrained
17 and enjoined from selling, renting, leasing, transferring, or
18 otherwise disclosing the name, address, telephone number, social
19 security number, credit card number, bank account number, e-mail
20 address, or other identifying information of any person who paid
21 any money to any Defendant, who was solicited to pay money to
22 Defendants, or whose identifying information was obtained for the
23 purpose of soliciting them to pay money to Defendants, in
24 connection with the sale or offer for sale of any Work-At-Home
25 Opportunity, at any time prior to the date this Order is entered.
26 *Provided* that any party subject to this provision may disclose

1 such identifying information to a law enforcement agency or as
2 required by any law, regulation, or court order.

3
4 **V. DISTRIBUTION OF ORDER BY DEFENDANTS**

5 **IT IS FURTHER ORDERED** that, for a period of five (5) years
6 from the date of entry of this Order, Defendants shall:

7 A. Provide a copy of this Order to, and obtain a signed and
8 dated acknowledgment of receipt of same from, each officer or
9 director, each individual serving in a management capacity, all
10 personnel involved in responding to consumer complaints or
11 inquiries, and all sales personnel, whether designated as
12 employees, consultants, independent contractors or otherwise,
13 immediately upon employing or retaining any such persons, for any
14 business where

15 1. Defendants, individually or jointly, are the majority
16 owners of the business or directly or indirectly manage or
17 control the business, and where

18 2. the business sells or markets Work-At-Home Opportunities
19 or uses classified advertising, direct mail solicitations or a
20 website to market or sell its products or services, or assists
21 others in said activities.

22 B. Maintain for a period of three (3) years after
23 creation, and upon reasonable notice, make available to
24 representatives of the Commission, the original signed and dated
25 acknowledgments of the receipt of copies of this Order, as
26 required in Subsection A.

1 VI. RECORD KEEPING PROVISIONS

2 IT IS FURTHER ORDERED that, for a period of eight (8) years
3 from the date of entry of this Order, where Defendants,
4 individually or jointly, are the majority owners or directly or
5 indirectly control the business, Defendants and their agents,
6 employees, officers, corporations, successors, and assigns, and
7 those persons in active concert or participation with them who
8 receive actual notice of this Order by personal service or
9 otherwise, are hereby restrained and enjoined from failing to
10 create and retain the following records:

- 11 (A) Accounting records that reflect the cost of goods or
12 services sold, revenues generated, and the disbursement
13 of such revenues;
- 14 (B) Personnel records accurately reflecting: the name,
15 address, and telephone number of each person employed
16 in any capacity by such business, including as an
17 independent contractor; that person's job title or
18 position; the date upon which the person commenced
19 work; and the date and reason for the person's
20 termination, if applicable;
- 21 (C) Customer files containing the names, addresses, phone
22 numbers, dollar amounts paid, quantity of items or
23 services purchased, and description of items or
24 services purchased, to the extent such information is
25 obtained in the ordinary course of business;
- 26 (D) Complaint and refund requests (whether received
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1 directly, indirectly or through any third party) and
2 any responses to those complaints or requests; and
3 (E) Copies of all sales scripts, training materials,
4 advertisements, or other marketing materials.

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6 **VII. COMPLIANCE REPORTING BY DEFENDANTS**

7 **IT IS FURTHER ORDERED** that, in order that compliance with
8 the provisions of this Order may be monitored:

9 A. For a period of five (5) years from the date of entry of
10 this Order, Defendants shall notify the Commission of the
11 following:

- 12 1. Any changes in Defendant Hayashi's residence,
13 mailing address, and telephone number, or
14 Defendant Komaco's business or mailing addresses
15 and telephone numbers, within ten (10) days of the
16 date of such change;
- 17 2. Any changes in Defendant Hayashi's employment
18 status (including self-employment) within ten (10)
19 days of such change. Such notice shall include
20 the name and address of each business that the
21 Defendant is affiliated with or employed by, a
22 statement of the nature of the business, and a
23 statement of the Defendant's duties and
24 responsibilities in connection with the business
25 or employment; and
- 26 3. Any proposed change in the structure of Defendant
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1 Komaco or any proposed change in the structure of
2 any business entity owned or controlled by
3 Defendants, individually or jointly, such as
4 creation, incorporation, dissolution, assignment,
5 sale, merger, creation or dissolution of
6 subsidiaries, proposed filing of a bankruptcy
7 petition, or any other change that may affect
8 compliance obligations arising out of this Order,
9 thirty (30) days prior to the effective date of
10 any proposed change; *provided*, however, that, if
11 Defendants learn of a proposed change less than
12 thirty (30) days prior to the date such action is
13 to take place, Defendants shall notify the
14 Commission as soon as is practicable after
15 learning of such proposed change;

16 B. One hundred eighty (180) days after the date of entry
17 of this Order, Defendants shall provide a written report to the
18 FTC, sworn to under penalty of perjury, setting forth in detail
19 the manner and form in which Defendants have complied and are
20 complying with this Order. This report shall include but not be
21 limited to:

- 22 1. Defendant Hayashi's current residential address
23 and telephone number, and Defendant Komaco's
24 current business address and telephone number;
- 25 2. Defendant Hayashi's current employment, business
26 address and telephone number, a description of the
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1 employer's business activities, and the
2 Defendant's title and responsibilities for the
3 employer;

4 3. A copy of each acknowledgment of receipt of this
5 Order Defendants obtain pursuant to Section V; and

6 4. A statement describing the manner in which
7 Defendants have complied and are complying with
8 the injunctive provisions in Section I of this
9 Order.

10 C. Upon written request by a representative of the
11 Commission, Defendants shall submit additional written reports
12 (under oath, if requested) and produce documents on fifteen (15)
13 days' notice with respect to any conduct subject to this Order;

14 D. For the purposes of this Order, Defendants shall, unless
15 otherwise directed by the Commission's authorized
16 representatives, mail all written notifications to:

17 Assistant Regional Director
18 Western Region - Los Angeles
19 Federal Trade Commission
10877 Wilshire Blvd., Suite 700
Los Angeles, California 90024

20 Re: FTC v. Komaco Int'l, Inc., et al.

21 E. For the purposes of this Section, "employment" includes
22 the performance of services as an employee, consultant, or
23 independent contractor; and "employers" includes any individual
24 or entity for whom Defendants perform services as an employee,
25 consultant, or independent contractor.

26 F. For purposes of the compliance reporting required by
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1 this Section, the Commission is authorized to communicate
2 directly with Defendants.

3
4 **VIII. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

5 **IT IS FURTHER ORDERED** that the Commission is authorized to
6 monitor Defendants' compliance with this Order by all lawful
7 means, including but not limited to the following:

8 A. The Commission is authorized, without further leave of
9 court, to obtain discovery from any person in the manner provided
10 by Chapter V of the Federal Rules of Civil Procedure, Fed. R.
11 Civ. P. 26-37, including the use of compulsory process pursuant
12 to Fed. R. Civ. P. 45, for the purpose of monitoring and
13 investigating Defendants' compliance with any provision of this
14 Order;

15 B. The Commission is authorized to use representatives
16 posing as consumers and suppliers to Defendants, Defendants'
17 employees, or any other entity managed or controlled in whole or
18 in part by Defendants, without the necessity of identification or
19 prior notice; and

20 C. Nothing in this Order shall limit the Commission's
21 lawful use of compulsory process, pursuant to Sections 9 and 20
22 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether
23 Defendants have violated this Order or the FTC Act.

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IX. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall, within three (3) business days of receipt of written notice from the Commission, permit representatives of the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where

1. Defendants, individually or jointly, are the majority owners of the business or directly or indirectly manage or control the business, and where

2. the business sells or markets Work-At-Home Opportunities or uses classified advertising, direct mail solicitations or a website to market or sell its products or services, or assists others engaged in said activities.

In providing access, Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or

1 otherwise, of any business to which Subsection A applies,
2 concerning matters relating to compliance with the terms of this
3 Order. The person interviewed may have counsel present.

4 *Provided that, upon application of the Commission and for*
5 *good cause shown, the Court may enter an ex parte order granting*
6 *immediate access to Defendants' business premises for the*
7 *purposes of inspecting and copying all documents relevant to any*
8 *matter contained in this Order.*

9
10 **X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

11 **IT IS FURTHER ORDERED** that, within five (5) business days
12 after receipt by Defendants of this Order as entered by the
13 Court, Defendants shall submit to the Commission a truthful sworn
14 statement, in the form shown on Attachment A hereto, that shall
15 acknowledge receipt of this Order.

16
17 **XI. COSTS AND ATTORNEYS FEES**

18 **IT IS FURTHER ORDERED** that each party to this Order shall
19 bear its own costs and attorney's fees incurred in connection
20 with this action.

21
22 **XII. CONTINUED JURISDICTION**

23 **IT IS FURTHER ORDERED** that this Court shall retain
24 jurisdiction of this matter for all purposes.

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1 XIII. INDEPENDENCE OF OBLIGATIONS

2 IT IS FURTHER ORDERED that the expiration of any
3 requirements imposed by this Order shall not affect any other
4 obligation under this Order.

5
6 XIV. WAIVER OF CLAIMS

7 IT IS FURTHER ORDERED that Defendants waive all claims under
8 the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by
9 Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and all rights to
10 seek appellate review or otherwise challenge or contest the
11 validity of this Order, and further waive and release any claim

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1 they may have against the FTC or its employees, agents or
2 representatives.

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4 SO STIPULATED:

5 DATED: Sept 17, 2002

K.H.H.
KOMACO INTERNATIONAL, INC.
by Kenshin Hayashi, as Owner and
Principal of Komaco Int'l, Inc.

8 DATED: Sept 17, 2002

Kenshin Hayashi
KENSHIN HAYASHI, individually

10 DATED: December 2, 2002

Barbara Y.K. Chun
BARBARA Y.K. CHUN
Attorney for Plaintiff FTC

12 APPROVED AS TO FORM:

13 DATED: July 23, 2002

Stephen H. Marcus
STEPHEN H. MARCUS
Attorney for Defendants Komaco
Int'l, Inc. and Kenshin Hayashi

16 IT IS SO ORDERED:

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18 Dated: 10/10/02

Lourdes G. Baird
LOURDES G. BAIRD
UNITED STATES DISTRICT JUDGE

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ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

KOMACO INTERNATIONAL, INC.,
a Nevada corporation, dba
Success Masters International
and Max Horizon Securities;

ROBERT LEE ANDERSON,
individually and as an officer
of Komaco Int'l, Inc.; and

KENSHIN HAYASHI, individually
and as a principal of Komaco
Int'l, Inc.,

Defendants.

CV 02-04566 LGB (RNBx)

AFFIDAVIT OF DEFENDANT
KENSHIN HAYASHI

I, Kenshin Hayashi, hereby declare as follows:

1. My name is Kenshin Hayashi. The address of my residence is _____ [street address, city, state, zip code, country]. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a Defendant in FTC v. Komaco Int'l, Inc. et al., CV 02-04566 LGB (RNBx) (United States District Court for the Central District of California).

3. On _____, I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction Against Defendants Komaco Int'l, Inc. and Kenshin Hayashi, which was signed by the Honorable Lourdes G. Baird and entered by the Court

1 on _____ [date of entry of Order]. A true and correct
2 copy of the Order I received is appended to this Affidavit.

3 I declare under penalty of perjury under the laws of the
4 United States that the foregoing is true and correct. Executed
5 on _____ [date], at _____ [city, state].
6

7 KENSHIN HAYASHI
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9

10 State of _____, City of _____

11 Subscribed and sworn to before me
12 this ____ day of _____, 200__.

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14 Notary Public

15 My Commission Expires:
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