

**PUBLIC AND MEDIA RESPONSES TO THE FIRST TOBACCO LITIGATION
TRIAL IN NEW ZEALAND (POU VERSUS BAT)**

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Abstract

This paper focuses on awareness of and attitudes towards issues arising from New Zealand's first tobacco litigation trial. It is based on a national telephone survey and a content analysis of related print and radio media relating to the trial. Interviewees showed a moderate level of awareness about the trial and verdict. Only a minority supported the plaintiff (Janice Pou) in her claim for damages against the tobacco companies. The majority of support was in favour of the tobacco companies (68%). The reasons cited for this support included: the information about the effects of smoking was widely known at the time Pou became addicted, she did not try hard enough to quit, and the tobacco companies reasonably informed the public about the effects of smoking their products. In contrast, the majority of media coverage about the trial and verdict was in favour of Janice Pou, or neutral. Thus, contrary to expectation and the support of the media, the New Zealanders' surveyed were reluctant to support litigation as a means of addressing the costs to the country caused by smoking-related illness. Tobacco industry denormalisation strategies could help to shift public support in favour of litigation and corporate accountability.

BACKGROUND

Janice Pou was diagnosed with lung cancer in 2001. After watching a television programme about the deceptive behaviour of tobacco companies, she started legal proceedings against British American Tobacco New Zealand (BAT). She died in 2002, and the case was continued by her estate. In essence, the case argued that the tobacco companies failed to adequately inform the public about the risks associated with tobacco smoking, despite evidence that these risks were well appreciated by the two companies at the time Janice Pou

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started smoking in 1968 (aged 17 years). Ms Pou's case also argued that by the time the full health risks of tobacco use were public knowledge she was heavily addicted to smoking. The case went to trial in the New Zealand High Court in February 2006. The judgement released 10 weeks after the end of the trial found that the tobacco company had adequately informed smokers of the dangers of smoking cigarettes and that Janice Pou was "under a duty to immediately take reasonable steps immediately to stop smoking, but she did not do so" (Lang 2006).

Up until 2006 tobacco companies in New Zealand enjoyed a litigation-free providence, having not been held accountable in a court of law for any of the health effects or deaths caused by the use of their products. The media attention aroused by the *Pou v. BAT* case was testament to the audacious nature of the trial. The media were treating New Zealanders to a rare glimpse of the face of the New Zealand tobacco industry, an industry kept largely in the background while their products themselves remain dominant in retail outlets across the country. There was little precedent for this type of trial, and we could only look abroad to evidence of success or otherwise. Australia has gained some tobacco litigation experience in the past decade, with *McCabe v. British American Tobacco Australia (BATA)* being particularly conspicuous due to evidence of document destruction, which ultimately led to BATA's defeat in the Supreme Court of Victoria in 2002. Wakefield and colleagues conducted a thematic frame analysis of Australian newspaper coverage of the *McCabe v. BATA* trial. They found that messages were either positively or negatively slanted and tended to frame the debate around "smoking as an individual choice for which smokers are responsible", or "tobacco companies were dishonest and needed to be controlled by government" (Wakefield et al. 2003). In conclusion, the authors drew attention to the implications of these responses from the media, suggesting the need for more effective public communication about the nature of addiction to tobacco and the health implications of being addicted to smoking.

Tobacco litigation offers considerable opportunity to advance the objectives of tobacco control and is argued to be more than merely a battle of (disproportionate) power between corporate body and individual citizen. Litigation cases, particularly when they are uncommon, as in Australia and New Zealand, generate considerable publicity about the effects of smoking and the behaviour of the tobacco industry. As noted by Liberman, litigation also plays a significant regulatory function by raising the price of tobacco products (to cover liability costs) and providing compensation to the victims, among other effects (Liberman 2004, Daynard 2003). New Zealand has a comparatively successful tobacco control record: adult smoking prevalence rates are now 19.9% and smoking among adolescents and young people is also steadily declining (Ministry of Health, 2008). New Zealand has generally responded sympathetically to the introduction of smoke-free policies, the most recent being a ban on smoking in bars and restaurants in December 2005 (Thomson and Wilson 2006), and the introduction of graphic warnings on tobacco products is to be phased in from 2008 (O'Connor 2007). These strategies are undoubtedly contributing to the overall decline in smoking prevalence. However, until 2006 there had been no litigation case in New Zealand to recover costs from the tobacco industry responsible for promoting and selling products that have catastrophic consequences on health.

The *Pou v. BAT* trial presented a unique opportunity to evaluate public opinion on tobacco litigation in general, while seeking to identify some of the pervasive beliefs that underpin support for, or resistance to, the role of litigation as a possible new tool for tobacco control in New Zealand. The aim of this study was to explore the awareness of, and attitudes towards,

the *Pou v. BAT* trial, including differences by demographic factors and by source of information. Beliefs about the addictiveness of tobacco were assessed in order to explore possible underlying factors influencing attitudes towards litigation in New Zealand. It was expected that those who perceived that it was *not difficult* to quit smoking would be less likely to be in support of the Pou case and therefore would be *less likely* to support litigation against tobacco companies in general. Socio-demographic and smoker status differences in support of litigation were also anticipated, as were group differences in awareness and recall of the trial.

METHODS

Sample

A national sample of 750 adults (aged over 18 years) participated in a computer-assisted telephone interview (CATI) survey between 13 and 17 May 2006. Interviews were conducted by market research company UMR Research in the week following the announcement of the verdict of the *Pou v. BAT* litigation trial. UMR operates under the jurisdiction of the Association of Market Research Organisations (AMRO) and is accredited to conduct telephone surveys.

Procedure

Telephone numbers were sourced from a directory of residential and commercial addresses. The sample was stratified by geographical location, which included 23 directory regions in New Zealand. A filtering strategy was employed to ensure only private households were telephoned. A maximum of five call-backs were made to households with no-response. In addition, the interviewers offered to call back at more convenient times to ensure the sample was as representative as possible. Data collection was weighted by age, sex and household size in order to achieve appropriate proportions of the sample in each region.

Questionnaire

The brief questionnaire included 20 items, the majority of which concentrated on the issue of awareness of, and attitudes towards, the *Pou v. BAT* tobacco litigation trial. Standard socio-demographic information was collected, including age, sex, Māori² or non-Māori ethnicity, and income level. Trial-specific items included: (unprompted) awareness of the trial (response yes or no); and for those aware of the trial, awareness of the outcome of the trial (response yes or no), and source of information about the trial (newspaper, television, radio, internet, magazines, family/friends) (response yes or no). Those aware of the trial who were unsure or incorrect about the trial result were told of the outcome. All those aware of the trial were asked about who should have won the trial (Janice Pou or BAT) and on what basis (open-ended). For the whole sample, additional items also assessed opinions about tobacco addictiveness (on a five-point scale from “not at all” to “extremely addictive”) and tobacco companies’ openness about the risks of smoking (on a five-point scale from “not at all” to “fully”), and two items assessed the perceived impact of the outcome of the trial for smokers and for the tobacco companies (open-ended).

² The indigenous people of New Zealand.

Data Analysis

Data from the completed questionnaires were entered into SPSS³ version 12.0. Descriptive statistics such as frequencies and proportions were used to report results from the primary-level analysis of each item. Further analyses were conducted to assess socio-demographic differences across the main outcome items: awareness of the case, opinion about the verdict, and the basis for beliefs about the outcome of the trial. The point estimates represent results from weighted data.

Media Analysis Coding Procedure

Our sample included news / current affairs coverage of the *Pou v. BAT* trial in all national daily newspapers and the three standard news channels (TV1, TV3 and Prime television) from 1 January 2006 to 12 May 2006. This covered the period of highest media coverage of the case, and was likely to be the most influential for forming participants' knowledge and opinions because of the scale and recent proximity. Articles included in the analysis had to refer to the *Pou v. BAT* case specifically for at least five lines. The selection of media articles was focused on articles relating specifically to, or referencing, the *Pou v. BAT* trial. Keywords for the search therefore included "Janice Pou" and "British American Tobacco" and/or "WD & HO Wills".

The print media article samples were purchased from the Chong media clippings (Chong Media Bureau 2006) and the television footage and radio newsbytes were purchased from the University of Auckland's Robert and Noeline Chapman Archive (University of Auckland 2006).

Coding Framework

A coding system was developed based on the methodology presented by Durrant et al. (2003), which was in turn based on the work of Clegg-Smith et al. (2002). A modified version of the methodology was adopted for the present study. Articles were analysed by the coding team to determine the opinion slant in each of them. An article was coded pro or anti if it included more than one statement indicating bias to either side of the case. Each article was coded only on the basis of the strongest slant deciphered by the coder. The coding framework was agreed upon between three members of the research team, but only one member undertook the media content analysis.

RESULTS OF CONTENT ANALYSIS

A total of 108 news articles were extracted between 1 January 2006 and 12 May 2006. This included: 29 (27%) from national newspapers, 78 (72%) from local newspapers and one magazine article. Of the total sample (n = 108) of print media stories, three-quarters 75% (n = 81) were news stories, 16.7% (n = 18) were letters to the editor, and 8.3% (n = 9) were opinion pieces and editorials. The articles were coded as: pro-Janice Pou (n = 50, 46.3%), neutral (n = 30, 28%), anti-tobacco industry (n = 16, 15%), anti-Janice Pou (n = 10, 9.3%) and pro-industry (n = 2, 1.9%).

³ A data mining, statistical analysis tool for the social sciences.

Between 1 January and 12 May 2006, 21 stories were presented in radio and television media. Of the total sample (n = 21) for television and radio, over half (52.4%, n = 11) appeared on TV1, 23.8% (n = 5) were from Radio New Zealand, 14.3% (n = 3) were from TV3, and 9.5% (n = 2) were from Prime TV. The stories were coded as pro-Janice Pou (n = 12, 57%) or neutral (n = 9, 43%) and anti-Janice Pou (n = 10, 9.3%).

RESULTS OF SURVEY

In total, 750 interviewees completed the telephone survey from a sample of 2,953 New Zealanders aged over 18 years, resulting in a 25% overall response rate. The survey data were weighted according to age, sex and household size; a 92% weighting efficiency was achieved, suggesting that the sample obtained closely represented actual population demographic characteristics (Table 1).

Table 1 Demographic comparison of the New Zealand population and the survey population

	New Zealand population*	Survey population / number	
Gender (Male)	49%	48%	359
Ethnicity (Māori)	15%	11%	82
Smoking status (smoker)	23%	18%	137
Median age	36 years	35–39 yrs	107
Median income	\$24,000	\$40,000	–

* Based on 2006 New Zealand Population Census data (Statistics New Zealand 2006).

The sample comprised 10.9% Māori (n = 82) and 89.1% non-Māori (n = 668). Males made up 47.8% (n = 359) of the sample and females 52.2% (n = 391). Smokers made up 18% (n = 137) of the sample, and 36% (n = 222) of the sample were ex-smokers. The sample population was slightly older, with better income, and included fewer smokers and Māori, compared to the proportions represented in the general population.

Awareness of Trial

Participants were asked whether they were aware of a high court trial between the estate of Janice Pou and BAT. Unprompted responses indicated that 82.5% (n = 619) of the total sample were aware of the trial, 16.1% (n = 121) were unaware of the trial and 1.3% (n = 10) were unsure. When a standard description of the trial was read to participants who were previously unaware or unsure of the trial (n = 131), 25.2% (n = 33) then reported that they now recalled being aware of the trial, while 74.8% (n = 98) remained unfamiliar with the trial. Thus, when prompted, 652 (87%) were aware of the trial.

Of the total sample who were aware of the trial (n = 652), 76% (n = 493) were aware of the trial verdict, 21% (n = 137) did not know the outcome and 3% (n = 22) were unsure. Of those who were aware of the trial, older participants (over 60 years) were more likely to report being aware of the outcome than others. Māori participants (n = 49, 69%) and current smokers (n = 80, 69%) were less likely to report being aware of the outcome of the trial compared to non-Māori (n = 413, 76%) and non-smokers (n = 413, 77%).

Recalled Details about the Trial

Of those who had heard of the trial (n = 652), 56% (n = 365) said they were unable to recall specific details about the trial. A further 80 (12%) were unsure, and were found to not recall specific details. Of those who did recall details about the trial (n = 207), the details included:

Janice Pou died before the case was resolved and her family continued the trial (29%, n = 60); Janice Pou was suing BAT because they failed to warn her about the risks of smoking (25%, n = 52); and Janice Pou stated that she was unaware of the risks of smoking before she started smoking (17%, n = 35). The remainder of the sample recalled other details of the trial, including that Janice Pou was too addicted to quit (15%, n = 31) and that BAT argued that Janice Pou knew the risks and could have quit if she tried (14%, n = 29).

Opinion on the Outcome

Of the sample who were aware of the trial (unprompted and prompted) (n = 652), 65% (n = 421) said that BAT rightfully won the case; 13% (n = 84) felt that Janice Pou should have won the case, and 23% (n = 147) reported being unsure. More males compared to females (17% vs 9%; p < .01), Māori compared to non-Māori (21% vs 12%; p = .05) and smokers compared to non-smokers (18.3% vs 11.7%; p = .107) reported that Janice Pou should have won the case.

Table 2 presents the open-ended responses to the question “On what basis do you think that, in your opinion, BAT should have won this trial” by those who said that BAT rightfully won the case (n = 421). The most common responses by this group (interviewees could give several responses) included: “information about smoking risks was widely available” (39.1% n = 165), and it was “her personal choice and responsibility that she chose to smoke” (34 %, n = 143). Of those who supported Janice Pou (again, interviewees could give several responses) (n = 84), the majority of participants suggested that “the risks of smoking were unknown at that time” (54.8%, n = 46), “tobacco companies were deceptive about the risks” (31%, n = 26), “smoking was more socially acceptable then” (26.2%, n = 22), and “smoking is addictive and therefore difficult to quit” (25%, n = 21).

Table 2 Reasons given for why BAT/ Wills tobacco companies should have won the trial (n = 421)

	%
Information on smoking widely available	39.1
She knew the risks (16%)	
There is information in the public domain and freely available then and later (18.1%)	
The dangers of smoking are written on the packet and information is given at school (5%)	
Personal choice and responsibility	34.1
It was a personal choice / done of own free will (27.5%),	
Companies produce hazardous items, but should take responsibility for her actions (6.6%)	
Could have quit if she tried / strength of character	31.6
If she had wanted to give up she could have (20.7%)	
I managed to stop smoking and so could she (3.3%)	
She didn't have the strength of character to give up, and should have tried harder (4.8%)	
She had many chances to give up (1.4%)	
Common sense	18.7
Everyone knows that smoking kills (12.1%)	
Ignorance is no excuse (3.1%)	
It's common sense that it's bad for you (3.5%)	
Disagree with suing culture	4.0
If she'd been successful where would it have stopped? (1.9%)	
Don't approve of “the suing culture”; should take personal responsibility / company not responsible / I wouldn't sue (1.1%)	
She was just after the money for her children (1.0%)	
Weak legal case	2
Her legal case was not strong and the judge was right (2%)	
Other	5.6

* Data were based on 64% of respondents who were aware of the trial and felt that BAT should have won

General Attitudes towards Addiction and Tobacco Litigation in New Zealand

Perceived addictiveness of tobacco smoking was assessed on a scale from 1 (very addictive) to 5 (not addictive). The results showed that 55% (n = 410) of all 750 participants perceived that smoking is “very addictive”, compared to 22% (n = 166) who reported that smoking is moderately addictive and 6% (n = 44) who considered it slightly or not addictive; 17%, (n = 130) were unsure. Among the sample of current smokers (n = 137), 65%, (n = 89) perceived that smoking is very addictive compared to 53% (n = 325) of the 613 current non-smokers, $F(1,800) = 4.370$, $p < .05$. An analysis of variance between groups was conducted to determine whether preference for the outcome of the trial was associated with perceived addictiveness of smoking; the results showed that those who believed that smoking was *moderately addictive* or *not addictive* were more likely to support BAT compared to those who thought smoking was *highly addictive* $F(5,651) = 2.332$, $p < .05$.

Of the total sample (n = 750), 55%, (n = 412) believed that tobacco companies informed the public about the risks of smoking, 26% (n = 195) were neutral or unsure, and 19% (n = 143) felt that tobacco companies did not adequately inform the public about the risks of smoking. Similarly, 38% (n = 285) did not think the tobacco industry was responsible for the health effects or deaths caused by smoking cigarettes, 32% (n = 240) were unsure and 30% (n = 225) stated that the industry was responsible. Furthermore, there was little support for the New Zealand Government to sue tobacco companies for the recovery of taxpayer-funded health care costs due to smoking. Of those who responded to this item (n = 749), 65% (n = 487) were not supportive and 27.7% (n = 207) were supportive; 7.3% (n = 55) were unsure. Males were more likely to support suing (31%, n = 113) compared to females (24 %, n = 95), as were participants aged less than 40 years (58%, n = 120) compared to participants aged over 40 years (42.3%, n = 88), although the differences were not statistically significant ($p = .406$).

DISCUSSION

This study was undertaken to explore New Zealanders’ opinions of the recent tobacco litigation case between BAT and the family of Janice Pou. Overall, awareness of the trial was high, with the majority of participants sourcing information from newspapers and television. Media stories were generally either sympathetic to Janice Pou or were perceived to be unbiased. The New Zealand media did not, however, place responsibility with the tobacco industry.

The Support for BAT and its Implications

The majority of the participants thought that BAT rightfully won the trial, citing that smokers were “aware of the risks” and “it’s a matter of individual choice and responsibility”. Other possible reasons for majority support for BAT (or against individual claims) may reflect a general distaste for the introduction or mainstreaming of corporate litigation cases in New Zealand, or a lack of knowledge of the opportunities for tobacco control progress with tobacco litigation (Wakefield et al. 2003, Hammond et al. 2006). It is also possible that the New Zealand public remain relatively uninformed about the behaviour of tobacco companies, due to their low profile in this country. Despite the apparent high awareness of the addictiveness of tobacco smoking, there may remain in New Zealand (as elsewhere) a fundamental belief in the individual’s responsibility for decision-making and health

behaviours. This belief may also be confounded by the current (relatively) high level of public knowledge of the health risks of smoking that makes it difficult for people to imagine a time when these health risks were not known by most adults.

A belief in self-reliance rather than hand-outs may underpin the reluctance to support an individual claim for damages against the tobacco company. It is also possible that the New Zealand public are resistant to litigation for fear that it may lead to large monetary rewards for individual smokers and their families, precluding the opportunity for thousands of other equally worthy smokers and ex-smokers. As Wakefield and colleagues (2003) found in their analysis of news media coverage of the McCabe trial, the Australian media were reluctant to show support for Rolah McCabe for several reasons, one of which was fear of the “slippery slope” -- that a win for McCabe might invite others to follow. New Zealand’s legislative and cultural landscape is generally not supportive of personal injury litigation. Legislation formulated in 1972, further amended in 1982 and 1992, established the Accident Rehabilitation and Compensation Insurance (ACC) scheme. This landmark legislation established a publicly funded no-fault compensation system for the vast majority of accidents and injuries (Campbell 1996). Given the lack of personal injury suits in New Zealand, it is perhaps not surprising that the public is not supportive of those seeking compensation.

Among those who agreed that BAT should have won the trial, more than a third felt that Janice Pou could have quit if she had really tried -- indicating a lack of sympathy for those who do not manage to overcome their addiction to nicotine. Compared to smokers, non-smokers were significantly less likely to say that tobacco is very addictive, suggesting that a significant proportion of the population underestimate the nature of nicotine addiction. Those who perceived that smoking is not very addictive were more likely to express support in favour of BAT, and therefore appeared less likely to support litigation against tobacco companies in general.

Other studies have identified that smokers and the public underestimate the extent of illnesses caused by smoking (Hammond et al. 2006, Schoenbaum 1997, Strecher et al. 1995) and that would-be smokers underestimate the addictiveness of smoking (Romer and Jamieson 2001). This suggests that the public may wrongly assume that smokers are knowingly responsible for their situation. In Canada, Ashley and Cohen (2003) found that although there was public support for some regulatory measures against the tobacco industry, the majority of the sample considered that the tobacco industry was not mostly/completely responsible for smoking-related illness, and were not supportive of suing for taxes lost from smuggling.

Results from the New Zealand survey reveal a reluctance to challenge the status quo when it comes to tobacco industry conduct in this country. The small proportion of anti-tobacco industry (as opposed to pro-Pou) articles in the sample period suggests a reticence about presenting stories that challenge fundamental beliefs about corporate autonomy and individual responsibility, as identified by Wakefield and colleagues (2003). Furthermore, it is possible that the low profile of the tobacco industry’s operations in New Zealand (i.e. no advertising or explicit promotion) may be highly effective in reducing the public awareness of industry conduct. Unlike in the United States, tobacco industry denormalisation themes, such as plain packaging (which raise awareness about tobacco industry responsibility) have seldom been the focus of tobacco control initiatives in New Zealand (Laugeson and Swinburn 2000, Thomson and Wilson 2005a, Hersey et al. 2005).

Changing public perceptions and increasing support for stronger tobacco control measures are possible, and media representations of tobacco issues remain a highly effective public communication and monitoring tool. Media coverage of tobacco control issues continues to demand attention, particularly when events of public interest arise, such as the introduction of graphic warning labels on cigarette packets. Morning newspapers, evening television news and work-breaks are vehicles of critical consumer / public policy opinion. Public support for smoke-free bars remained low for several years prior to the legislation that banned smoking in all New Zealand workplaces. Only 38% of people supported smoke-free bars in an April 2001 opinion poll, but this number almost doubled to 69% just five years later in April 2005 (Thomson and Wilson 2006). This suggests that increasing public familiarity with tobacco industry denormalisation strategies may lead to increased public support for litigation as part of a broader tobacco control agenda.

Limitations

Interpretation of the results of this study needs to take into consideration several limitations. Firstly, the low response rate from the telephone sampling procedure creates the possibility of selection bias in the sample. As previously acknowledged, the sample population was comparable to the general population on gender and ethnicity, but was slightly older, there were fewer smokers, and the average income of participants was higher than the population median.

The survey was also carried out immediately following the verdict, but this was 10 weeks after the trial had actually ended. The coverage of the case in the media peaked when the case was being heard and also when the verdict was reached. Because of the time from the end of the trial, the recall of the trial may have been compromised or altered at the time of the survey. The survey was carried out in the week after the verdict was announced, so there is the possibility that the opinions of the judge helped to determine some of the participants' opinions, rather than the evidence given in the trial. A survey before the verdict would have avoided this possibility. The inability to recall trial details by 445 of the 652 who recalled the trial indicates that opinions about the trial may have been based on little information except for the verdict.

In addition, no specific time period was included in the question addressing whether the tobacco industry adequately informed the public about the risks of smoking. Given that the industry has publicly acknowledged some of the health consequences of smoking in recent years, the answers to this question may have been distorted by this recent change. Finally, the media content analysis was conducted on media collected over the four months from just before the High Court trial started (January 2006) to after the verdict was announced (May 2006). There is potential for further content analysis of the media from the start of publicity about the case (2001) to the present to enable a fuller, more representative analysis.

The public may now be better positioned to receive robust information about the behaviour of tobacco companies and the role of litigation as an effective tobacco control measure. Clearly, the interest sparked by the *Pou v. BAT* trial was evidence of the depth of interest and opinion about the case, supportive or otherwise, and these debates are necessary for tobacco control in New Zealand to move forward as a truly comprehensive public policy strategy. The *Pou v. BAT* case captured the essence of the most fundamental and resilient issues underpinning tobacco control efforts internationally: tobacco industry accountability and responsibility, lack of sound public knowledge about addiction, and awareness of the continued surreptitious

nature of tobacco promotions. Until there is strong public support, it is unlikely that the political and legal climate will sufficiently change for successful legal action (either inquiries or litigation). Even the enforcement of present New Zealand laws on tobacco companies, such as those about deceptive statements in trade, requires political decisions on funding and government structures, and has political consequences (Thomson and Wilson 2005b).

Conclusion

Despite significant advances in tobacco control, public attitudes toward the *Pou v. BAT* trial reveal the broad discomfort within the New Zealand public regarding legal confrontation with the tobacco industry. There are several possible reasons for this, including a limited understanding of several key features of tobacco use (such as the irresponsible behaviour of tobacco companies) and the considerable pressure on youth to take up smoking. Alongside continued support for reducing uptake and quitting support, tobacco control advocacy efforts should focus on increasing the profile of anti-industry messages in news media coverage (Farrelly et al. 2002). Tobacco industry denormalisation strategies may be one way to raise awareness of tobacco industry behaviour and shift public support in favour of litigation and corporate accountability.

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