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6
7 Bankruptcy Counsel for eStyle, Inc.,
Debtor and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

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In re
ESTYLE, a Delaware corporation, dba
babystyle, Cadeau, and Cadeau Designs,

Debtor.

Tax I.D. No. 95-4712564

Case No. 2:08-bk-13518-SB

Chapter 11

**DEBTOR'S SECOND MOTION FOR
ORDER APPROVING DEBTOR'S
REJECTION OF UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY;
DECLARATION OF EMILIA FABRICANT**

DATE: May 27, 2008
TIME: 11:00 a.m.
PLACE: U.S. Bankruptcy Court
Courtroom 1575
255 East Temple Street
Los Angeles, CA 90012

I.

SUMMARY

eStyle, Inc. (the "Debtor"), requests an order of the Court approving the Debtor's rejection of two (2) unexpired leases (the "Leases") of nonresidential real property under which the Debtor is the lessee. The 2 affected properties (the "Properties") are described by location name and address in Section IV below. The Debtor, as lessee, entered into the Leases with the lessors also identified in Section IV below.

This Motion is based on the grounds that, in the Debtor's reasonable business judgment, the continued liabilities associated with the Leases will impede the Debtor's opportunity for a successful reorganization and/or are burdensome to the estate. The Debtor intends to close the two stores (the "Stores") operated at the Properties. Prior to closing the Stores, the Debtor shall conduct store closing sales at the Stores. The Court granted Debtor's motion for order authorizing the commencement of store closing sales at the Stores that are covered by the Leases at a hearing held on April 29, 2008. The Debtor intends to complete the store closing sales prior to May 30, 2008, but no later than June 30, 2008. As a consequence, upon completion of the store closing sales, the Debtor will no longer use the premises subject to the Leases. Pursuant to this Motion, the Debtor requests that the Court approve the rejection of the Leases effective as of the earlier of (a) June 30, 2008, or (b) the date upon which the Debtor turns over possession of the Property in broom swept condition, but no earlier than May 31, 2008.

Rejection of the Leases will avoid the continuing imposition of administrative claims for rent or adequate protection against the estate for properties where the reasonable business decision is that marketing the Debtor's leasehold interest is not cost effective and would not benefit the estate. The Leases each have terms that are burdensome to the Debtor. Under the circumstances, as currently evaluated by the Debtor, the Leases have no residual value for the Debtor or the estate. Accordingly, approval of rejection of the Leases, is in the best interest of the Debtor, creditors, all other

1 interested parties, and the estate. The Debtor is continuing to evaluate the leases and, if
2 appropriate, will modify or supplement this Motion.

3 This Motion is based on 11 U.S.C. § 365(a), the authorities set forth herein,
4 the attached Declaration of Emilia Fabricant, and any additional argument or evidence
5 that the Court may consider.

6 II.

7 **CHAPTER 11 FILING**

8 The Debtor commenced the above-captioned reorganization case by filing a
9 voluntary chapter 11 petition on March 19, 2008 (the "Petition Date"). The Debtor
10 remains in possession of its assets and continues to operate its business as the debtor in
11 possession pursuant to 11 U.S.C. §§ 1101(1), 1107(a), and 1108.

12 III.

13 **DEBTOR'S BUSINESS**

14 The Debtor is a multichannel retailer that sells maternity, baby and kids
15 apparel and toys, gear and related products direct to the consumer. As of the Petition
16 Date, the Debtor sold its products at 23 retail stores (21 babystyle stores and 2 Cadeau
17 stores), through its babystyle.com website, and through a direct mail program. The
18 Debtor sells merchandise under its babystyle and Cadeau private labels and under
19 leading brand labels. The Debtor also sells its Cadeau brand product to wholesale
20 accounts.

21 The Debtor's operations have historically not been profitable. The Debtor's
22 rehabilitation requires reorganization of the Debtor's operations and capital structure
23 and/or a sale or refinancing of the Debtor's business and/or assets. The Debtor is in the
24 process of implementing a business plan designed to reduce costs, improve operations,
25 eliminate unprofitable locations, and enhance the Debtor's long-term viability. Among
26 other things, the Debtor has terminated 14 employees at its corporate office, evaluated its
27 operations, and determined, as of this time, it to be necessary to close 8 of its retail
28 stores (the Court previously authorized the Debtor's rejection of 6 of the 8 leases for

1 these stores), subject to conducting store closing sales to maximize the value of the
2 Debtor's inventory at the locations to be closed.

3 IV.

4 THE LEASES

5 In connection with the operation of its business, the Debtor, as lessee,
6 entered into the 2 Leases that are the subject of this Motion. The store name, store
7 address, and landlord name and address with respect to the Leases that the Debtor
8 seeks to reject pursuant to this Motion are as follows:

9

Store Name	Store Address	Landlord
10 Westchester Mall	The Westchester Mall 125 Westchester Ave., Space 3700A White Plains, NY 10601	Simon Property Group (Texas), L.P. M.S. Management Associates, Inc. National City Center 115 West Washington Indianapolis, IN 46204
13 Glendale Galleria	1302 Glendale Galleria, 1 st Floor Space 1302 Glendale, CA 91210	Glendale Galleria c/o Kristen N. Pate, Assistant Gen. Counsel General Growth Management, Inc., as Agent 110 N. Wacker Chicago, IL 60606

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17 The Debtor will provide copies of the Leases upon request of any interested
18 party in this matter. Because the Leases are voluminous, production of the Leases other
19 than upon request would be unnecessarily burdensome and expensive.

20 As set forth above, the Debtor intends to close the two Stores that are
21 operated under the Leases after conducting store closing sales (or transferring the
22 inventory to other locations). As a consequence, upon completion of the store closing
23 sales, the Debtor will no longer use the premises that are the subject of the Leases for
24 business purposes. Thereafter, no revenue will be generated for the Debtor's estate
25 pursuant to the Leases. Moreover, the Debtor believes that the Leases contain terms
26 that are burdensome and that the burdens under the Leases outweigh any benefit that
27 might be derived by the estate from the Leases.

V.

**COURTS APPROVE THE REJECTION OF LEASES BASED ON THE EXERCISE OF
THE DEBTOR'S REASONABLE BUSINESS JUDGMENT**

The primary goal of chapter 11 is rehabilitation of the debtor. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 104 S. Ct. 1188, 1197, 79 L. E. 2d 482 (1984); see also Eastern Airlines, Inc. v. International Assoc. of Machinists & Aerospace Workers, A.F.L.-C.I.O., et al. (In re Ionosphere Clubs, Inc.), 108 B.R. 901, 937 (Bankr. S.D.N.Y. 1989) ("The paramount policy and goal of chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor"). In furtherance of this goal, there is a long-standing principle of bankruptcy law that a debtor should not be compelled to perform under a pre-bankruptcy contract that is burdensome to the estate. NLRB v. Bildisco & Bildisco, 465 U.S. at 528, 104 S. Ct. at 1198 ("[T]he authority to reject an executory contract is vital to the basic purpose of a chapter 11 reorganization, because rejection can release a debtor's estate from burdensome obligations that can impede a successful reorganization").

Bankruptcy Code section 365(a) provides that, subject to court approval, a debtor in possession "may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §§ 365(a) and 1107(a). Section 365(a) does not provide a standard for determining when rejection of an unexpired lease is appropriate. See Monarch Tool & Mfg. Co. v. Monarch Product Sales Corp. (In re Monarch Tool and Mfg. Co.), 114 B.R. 134, 137 (Bankr. S.D. Ohio 1990). However, courts traditionally have applied a "business judgment" standard in determining whether to authorize rejection of executory contracts and unexpired leases. See N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 523, 104 S. Ct. 1188, 1194-95, 79 L. Ed. 2d 42 (1984); Group of Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Company, 318 U.S. 523, 63 S. Ct. 727, 87 L. Ed. 959 (1943); In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2nd Cir. 1993); Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986). Accordingly, if the debtor in possession has reasonably

1 exercised its business judgment in determining to reject an executory contract, the
2 decision should be approved by the court. See Lubrizol Enterprises Inc. v. Richmond
3 Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47 (4th
4 Cir. 1985); Carrie v. Mobil Oil Corp (In re Tilco, Inc.), 558 F.2d 1369, 1372 (10th Cir.
5 1977); Robertson v. Pierce (In re Houg), 23 B.R. 798, 800 (Bankr. 9th Cir. 1982);
6 3 Collier on Bankruptcy ¶ 365.03[2] at 365-22 (15th ed. rev. 1998).

7 "As a general rule, a bankruptcy court presented with an application to
8 disaffirm the obligations of an executory contract need determine only whether it is
9 indeed executory and whether disaffirmance would be advantageous to the debtor." In re
10 Federated Department Stores, Inc., 131 B.R. 808, 811 (Bankr. S.D. Ohio 1991). Further,
11 "[t]he burden or hardship which rejection would impose on other parties to such a
12 contract is not a factor to be weighed by the bankruptcy court in ruling upon the debtor's
13 application." Id. As applied to a debtor's decision to reject an executory contract, it has
14 been held that the business judgment test "requires that the decision be accepted by
15 courts unless it is shown that the [debtor's] decision was one taken in bad faith or in
16 gross abuse of the bankrupt's retained business discretion." Lubrizol, 756 F.2d at 1047.

17 VI.

18 THE DEBTOR'S REJECTION OF THE LEASES SHOULD BE APPROVED

19 As stated above, the Debtor, subject to Court approval, shall close its stores
20 operated at the premises that are the subject of the Leases upon completion of store
21 closing sales anticipated to be completed as early as the end of May, 2008, but in no
22 event later than June 30, 2008. The Debtor has requested that the Court authorize the
23 closing of Stores by a motion on shortened time scheduled for April 29, 2008. As a
24 consequence, upon completion of the store closing sales, the Debtor will no longer use
25 the real property controlled under the Leases for business purposes. Following
26 completion of the store closing sales, no revenue will be generated for the Debtor's
27 bankruptcy estate pursuant to the Leases.

1 In determining that the Leases should be rejected, the Debtor exercised
2 reasonable business judgment and is considering, among other things: (1) the continued
3 liabilities associated with the Leases and the significant negative impact of such liabilities
4 on the Debtor's reorganization; (2) the lack of profitability of the operations previously
5 conducted at the leasehold locations; and (3) various financial factors dictating that the
6 Debtor's interests in the Leases are not worth marketing to proposed assignees and
7 cannot feasibly be sold to the landlords, including: (a) above market rental rates or rental
8 rates within a range of market rents that cause it not to be feasible for the Debtor to
9 assign its interests in the leases when considering the time necessary to market, (b) the
10 cost of carrying the lease while marketed, (c) the remaining term of the lease (including
11 options), (d) the security risk/expenses associated with a closed location, (e) the
12 likelihood of a lease premium being paid in a cash lump sum payment or over time, and
13 (f) legal fees and transaction costs association with assumption and assignment of the
14 lease.

15 The Debtor believes that the Leases all have terms that are burdensome to
16 the Debtor and the estate. Further, it appears that the burdens under the Leases
17 outweigh any benefit that might be derived for the estate pursuant to the Leases. In
18 summary, the Debtor, in the reasonable exercise of its business judgment, believes that
19 the Leases are burdensome and have no residual value for the Debtor or the estate.
20 However, the Debtor is continuing to evaluate and explore its options with respect to the
21 Leases and, if appropriate, may modify or supplement this Motion.

22 **VII.**

23 **CONCLUSION**

24 Based on the foregoing, and in order to avoid the imposition of unnecessary
25 administrative expense on the estate, the Debtor respectfully requests that the Court
26 approve the rejection of the unexpired leases of nonresidential real property identified in
27 Section IV above, including rejection of the Debtor's nonresidential real leases with the
28 following lessors: (1) Simon Property Group, L.P. (Westchester Mall); and (2) General

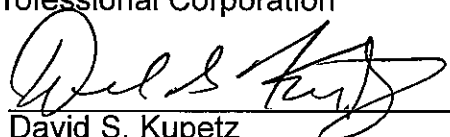
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1 Growth Management (Glendale Galleria). The Debtor requests that the rejection of the
2 Leases be made effective as of the earlier of (a) June 30, 2008, or (b) the date upon
3 which the Debtor turns over possession of the premises to the landlord in broom swept
4 condition (in any event, the premises will be turned over in broom swept condition) but no
5 earlier than May 31, 2008.

6 Dated: May 2, 2008

Respectfully submitted,

7 **SulmeyerKupetz**
8 A Professional Corporation

9 By: 
10 David S. Kupetz
11 Bankruptcy Counsel for eStyle, Inc.,
12 Debtor and Debtor in Possession

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DECLARATION OF EMILIA FABRICANT

I, Emilia Fabricant, declare:

1. I am the President and Chief Merchandising Officer of eStyle, Inc. (the "Debtor").
2. I have personal knowledge of the facts stated herein. I can testify that said facts are true and correct.
3. The Debtor commenced the above-captioned reorganization case by filing a voluntary chapter 11 petition on March 19, 2008 (the "Petition Date"). The Debtor remains in possession of its assets and continues to operate its business as the debtor in possession.
4. The Debtor is a multichannel retailer that sells maternity, baby and kids apparel and toys, gear and related products direct to the consumer. As of the Petition Date, the Debtor sold its products at 23 retail stores (21 babystyle stores and 2 Cadeau stores), through its babystyle.com website, and through a direct mail program. The Debtor sells merchandise under its babystyle and Cadeau private labels and under leading brand labels. The Debtor also sells its Cadeau brand product to wholesale accounts.
5. Pursuant to the foregoing motion (the "Motion"), the Debtor requests an order of the Court approving the Debtor's rejection of two unexpired leases (the "Leases") of nonresidential real property under which the Debtor is the lessee. The 2 affected properties (the "Properties") are described by location name and address in Paragraph No. 9 below. The Debtor, as lessee, entered into the Leases with the lessors also identified in Paragraph No. 9 below.
6. The Debtor intends to close the two stores (the "Stores") operated at the Properties. Prior to closing the Stores, and subject to Court approval granted at a hearing conducted on April 29, 2008, the Debtor shall conduct store closing sales at the Stores. The Debtor intends to complete the store closing sales as early as May 31, 2008,

1 but in no event later than June 30, 2008. As a consequence, upon completion of the
2 store closing sales, the Debtor will no longer use the premises subject to the Leases.
3 Pursuant to the foregoing Motion, the Debtor requests that the Court approve the
4 rejection of the Leases effective as of the earlier of (a) the date upon which the Debtor
5 turns over possession of the affected property in broom swept condition, or (b) June 30,
6 2008, but no earlier than May 31, 2008.

7 7. Rejection of the Leases will avoid the continuing imposition of
8 administrative claims for rent or adequate protection against the estate for properties and
9 it presently appears that the reasonable business decision is that marketing the Debtor's
10 leasehold interest is not cost effective and would not benefit the estate. The Leases each
11 have terms that are burdensome to the Debtor. Accordingly, it appears that approval of
12 rejection of the Leases, is in the best interest of the Debtor, creditors, all other interested
13 parties, and the estate. The Debtor is continuing to evaluate the Leases and whether any
14 other viable alternatives are available with respect to the Leases and, if appropriate, may
15 modify or supplement the foregoing Motion. However, in order to avoid the potential
16 imposition of unnecessary administrative expense on the estate, the Debtor has
17 determined that it is necessary and in the best interests of the Debtor, the estate, and
18 creditors to file the foregoing Motion so that it could come on for hearing before the Court
19 prior to the end of May, 2008.

20 8. The Debtor's operations have historically not been profitable. The
21 Debtor's rehabilitation requires reorganization of the Debtor's operations and capital
22 structure and/or a sale or refinancing of the Debtor's business and/or assets. The Debtor
23 is in the process of implementing a business plan designed to reduce costs, improve
24 operations, eliminate unprofitable locations, and enhance the Debtor's long-term viability.
25 Among other things, the Debtor has already conducted store closing stores and/or
26 ceased operations at six of its retail stores, terminated 14 employees at its corporate
27 office, evaluated its operations, and determined that, at this time, it appears necessary to
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1 close two more of its retail stores, subject to conducting store closing sales to maximize
2 the value of the Debtor's inventory at the locations to be closed.

3 9. In connection with the operation of its business, the Debtor, as
4 lessee (or assignee of the lessee) entered into the two Leases that are the subject of this
5 Motion. The store name, store address, and landlord name and address with respect to
6 the Leases that the Debtor seeks to reject pursuant to the foregoing Motion are as
7 follows:

8 Store Name	Store Address	Landlord
9 Westchester Mall	The Westchester Mall 125 Westchester Ave., Space 3700A White Plains, NY 10601	Simon Property Group (Texas), L.P. M.S. Management Associates, Inc. National City Center 115 West Washington Indianapolis, IN 46204
12 Glendale Galleria	1302 Glendale Galleria, 1 st Floor Space 1302 Glendale, CA 91210	Glendale Galleria c/o Kristen N. Pate, Assistant Gen. Counsel General Growth Management, Inc., as Agent 110 N. Wacker Chicago, IL 60606

16 10. As stated above, the Debtor, subject to Court approval, shall close its
17 stores operated at the premises that are the subject of the Leases upon completion of
18 store closing sales to be completed prior to June 30, 2008. The Court has already
19 authorized commencement of the store closing sales at the two Stores. As a
20 consequence, upon completion of the store closing sales, it is contemplated that the
21 Debtor will no longer use the real property controlled under the Leases for business
22 purposes. Accordingly, following completion of the store closing sales, no revenue will be
23 generated for the Debtor's bankruptcy estate pursuant to the Leases.

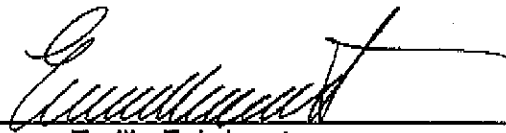
24 11. In determining that the Leases should be rejected, the Debtor
25 exercised reasonable business judgment and is considering, among other things: (1) the
26 continued liabilities associated with the Leases and the significant negative impact of
27 such liabilities on the Debtor's reorganization; (2) the lack of profitability of the operations
28 previously conducted at the leasehold locations; and (3) various financial factors dictating

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1 that the Debtor's interests in the Leases are not worth marketing to proposed assignees
2 and cannot feasibly be sold to the landlords, including: (a) above market rental rates or
3 rental rates within a range of market rents that cause it not to be feasible for the Debtor to
4 assign its interests in the leases when considering the time necessary to market, (b) the
5 cost of carrying the lease while marketed, (c) the remaining term of the lease (including
6 options), (d) the security risk/expenses associated with a closed location, (e) the
7 likelihood of a lease premium being paid in a cash lump sum payment or over time, and
8 (f) legal fees and transaction costs association with assumption and assignment of the
9 lease.

10 12. The Debtor believes that the Leases all have terms that are
11 burdensome to the Debtor and the estate. Further, it appears that the burdens under the
12 Leases outweigh any benefit that might be derived for the estate pursuant to the Leases.
13 In summary, the Debtor believes that the Leases are burdensome and have no residual
14 value for the Debtor or the estate. However, the Debtor is continuing to evaluate and
15 explore its options with respect to the Leases and, if appropriate, may modify or
16 supplement this Motion.

17 I declare under penalty of perjury that the foregoing is true and correct.
18 EXECUTED THIS 2ND DAY OF MAY, 2008, AT LOS ANGELES,
19 CALIFORNIA.

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21 _____
22 Emilia Fabricant
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406.

On May 2, 2008, I served the following document(s) described as **DEBTOR'S SECOND MOTION FOR ORDER APPROVING DEBTOR'S REJECTION OF UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY; DECLARATION OF EMILIA FABRICANT**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List (where an email address is not set forth) and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with SulmeyerKupetz's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent from the e-mail address mviramontes@sulmeyerlaw.com to the persons at the e-mail addresses listed in the Service List, I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY FAX TRANSMISSION: I caused the document(s) to be transmitted via facsimile to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was 213.629.4520. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 2, 2008, at Los Angeles, California.



Maria Viramontes

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DEBTOR

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- 22 Simon Property Group, Inc.
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Indianapolis, IN 46204
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(served via e-mail)
- 25
- 26 Taubman Landlords
(West Farms Mall LLC;
Willow Bend Shopping Center LP, et al.)
- 27 c/o Taubman Realty Group Limited
The Taubman Company
- 28 Attn: Andrew S. Conway

1 200 E. Long Lake Road, Ste. 300
2 Bloomfield Hills, MI 48303-0200
3 aconway@taubman.com
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4 The Donovan Offices
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6 Attn: Michael J. Glenn
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9 The Irvine Company, LLC
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14 ernie.park@bewleylaw.com
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17 robin.vanmeter@wachovia.com
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17 Wachovia Capital Finance Corporation (Western)
18 c/o William H. Kiekhofer III, Esq.
19 c/o Anthony J. Napolitano, Esq.
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