

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANHEUSER-BUSCH, INC.,

Plaintiff,

v.

MAJOR LEAGUE BASEBALL  
PROPERTIES, INC.,

Defendant.

Case No. 10 Civ. 8513 (RJS) (FM)

**MAJOR LEAGUE BASEBALL  
PROPERTIES, INC.'S ANSWER,  
AFFIRMATIVE DEFENSES, AND  
COUNTERCLAIM**

Defendant Major League Baseball Properties, Inc. (“MLBP” or “Defendant”), by and through its attorneys, states as follows for its Answer, Affirmative Defenses and Counterclaim to the Complaint of Anheuser-Busch, Inc. (“A-B” or “Plaintiff”):

**ANSWER TO A-B’S COMPLAINT**

1. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint, and on that basis denies the same.

2. **Answer:** MLBP admits Paragraph 2 of the Complaint.

3. **Answer:** MLBP admits that under Schedule A, Paragraph 12 of the Current Promotional Rights Agreement, A-B had an “exclusive sixty (60) day first negotiation period” which expired on August 14, 2010. MLBP denies the remaining allegations of Paragraph 3 of the Complaint.

4. **Answer:** MLBP denies each and every allegation set forth in Paragraph 4 of the Complaint.

5. **Answer:** MLBP denies each and every allegation set forth in Paragraph 5 of the Complaint.

6. **Answer:** MLBP denies each and every allegation set forth in Paragraph 6 of the Complaint.

7. **Answer:** MLBP denies each and every allegation set forth in Paragraph 7 of the Complaint.

8. **Answer:** MLBP denies each and every allegation set forth in Paragraph 8 of the Complaint.

9. **Answer:** MLBP denies each and every allegation set forth in Paragraph 9 of the Complaint.

10. **Answer:** MLBP denies each and every allegation set forth in Paragraph 10 of the Complaint, except that MLBP admits that it received a draft “Promotional Rights Agreement” from A-B on September 3, 2010.

11. **Answer:** MLBP admits that Mr. Brosnan reminded A-B that A-B made representations to MLBP and Major League Baseball (“MLB”) that MLB would remain A-B’s top, number one sports property in the U.S. MLBP further admits that Mr. Brosnan informed A-B that the April Letter of Intent is not a binding contract and that MLBP had the right to offer the sponsorship rights to the market. MLBP denies each and every one of the remaining allegations set forth in Paragraph 11 of the Complaint.

12. **Answer:** MLBP denies each and every allegation set forth in Paragraph 12 of the Complaint.

13. **Answer:** MLBPA denies each and every allegation set forth in Paragraph 13 of the Complaint.

14. **Answer:** MLBPA admits that the Complaint purports to be to a diversity action, and admits that it is a resident of the State of New York.

15. **Answer:** MLBPA admits that this Court has personal jurisdiction over it for the purposes of this action. MLBPA further admits that it maintains an office at 245 Park Avenue, New York, New York 10167.

16. **Answer:** MLBPA admits that venue is proper in the United States District Court for the Southern District of New York.

17. **Answer:** MLBPA denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth Paragraph 17 of the Complaint, and on that basis denies the same.

18. **Answer:** MLBPA admits Paragraph 18 of the Complaint.

19. **Answer:** MLBPA denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth Paragraph 19 of the Complaint, and on that basis denies the same.

20. **Answer:** MLBPA denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth Paragraph 20 of the Complaint, and on that basis denies the same.

21. **Answer:** MLBPA admits that the All-Star Game is one of the highest-rated sports events of the summer each year, and admits that beer is sold in ballparks during the baseball season. MLBPA denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth Paragraph 21 of the Complaint, and on that basis denies the same.

22. **Answer:** MLBP denies each and every allegation set forth in Paragraph 22 of the Complaint and states that the Current Promotional Rights Agreement speaks for itself.

23. **Answer:** MLBP admits that under the Current Promotional Rights Agreement, A-B had an “exclusive sixty (60) day first negotiation period” which expired on August 14, 2010. The Current Promotional Rights Agreement speaks for itself. MLBP denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 23 of the Complaint, and on that basis denies the same.

24. **Answer:** MLBP admits that under the Current Promotional Rights Agreement A-B had an “exclusive sixty (60) day first negotiation period” which expired on August 14, 2010. MLBP denies the remaining allegations of Paragraph 24 of the Complaint.

25. **Answer:** MLBP denies each and every allegation set forth in Paragraph 25 of the Complaint.

26. **Answer:** MLBP denies each and every allegation set forth in Paragraph 26 of the Complaint.

27. **Answer:** MLBP denies each and every allegation set forth in Paragraph 27 of the Complaint.

28. **Answer:** MLBP denies each and every allegation set forth in Paragraph 28 of the Complaint.

29. **Answer:** MLBP denies each and every allegation set forth in Paragraph 29 of the Complaint, except that MLBP admits that John Brody sent an e-mail on April 22, 2010, which e-mail speaks for itself.

30. **Answer:** MLBP denies each and every allegation set forth in Paragraph 30 of the Complaint.

31. **Answer:** MLBP denies each and every allegation set forth in Paragraph 31 of the Complaint.

32. **Answer:** MLBP denies each and every allegation set forth in Paragraph 32 of the Complaint.

33. **Answer:** MLBP admits that there was a public announcement on May 4, 2010 of a transaction between A-B and the NFL, denies that the April Letter of Intent was a “Renewal Agreement,” and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 33 of the Complaint, and on that basis denies the same.

34. **Answer:** MLBP denies each and every allegation set forth in Paragraph 34 of the Complaint.

35. **Answer:** MLBP denies each and every allegation set forth in Paragraph 35 of the Complaint.

36. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of Paragraph 36 of the Complaint, and on that basis denies the same, except that MLBP admits it received a draft “Promotional Rights Agreement” on September 3, 2010 from A-B.

37. **Answer:** MLBP admits that on September 17, 2010, Mr. Brosnan sent a letter to Mr. Peacock, and such letter speaks for itself. MLBP denies each and every allegation set forth in Paragraph 37 of the Complaint.

38. **Answer:** MLBP admits that Commissioner Selig spoke with David Peacock but denies each and every other allegation set forth in Paragraph 38 of the Complaint.

39. **Answer:** MLBP denies each and every allegation set forth in Paragraph 39 of the Complaint.

40. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of Paragraph 40 of the Complaint, and on that basis denies the same, except that MLBP admits that Ethan Orlinsky received a letter from Gary Rutledge on October 1, 2010.

41. **Answer:** MLBP denies each and every allegation set forth in Paragraph 41 of the Complaint and states that the October 5, 2010 letter speaks for itself.

42. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of Paragraph 42 of the Complaint, and on that basis denies the same, except that MLBP admits that it received an email from Gary Rutledge on October 8, 2010, attaching correspondence, which speaks for itself.

43. **Answer:** MLBP denies each and every allegation set forth in Paragraph 43 of the Complaint.

44. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of Paragraph 44 of the Complaint, and on that basis denies the same.

45. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of Paragraph 45 of the Complaint, and on that basis denies the same.

46. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth Paragraph 46 of the Complaint, and on that basis denies the same.

### **COUNT I**

47. **Answer:** MLBP repeats and incorporates its answers set forth in the preceding Paragraphs 1-46.

48. **Answer:** MLBP admits Paragraph 48 of the Complaint.

49. **Answer:** MLBP denies the allegation set forth in Paragraph 49 of the Complaint.

50. **Answer:** MLBP denies the allegation set forth in Paragraph 50 of the Complaint.

51. **Answer:** MLBP admits that the April Letter of Intent is not binding and that MLBP has advised A-B that the April Letter of Intent is not a binding agreement. MLBP further admits that it advised A-B that it had the right to offer its promotional rights to the market.

52. **Answer:** MLBP denies each and every allegation set forth in Paragraph 52 of the Complaint.

53. **Answer:** MLBP denies each and every allegation set forth in Paragraph 53 of the Complaint.

## **COUNT II**

54. **Answer:** MLBP repeats and incorporates its answers set forth in the preceding Paragraphs 1-53.

55. **Answer:** MLBP admits Paragraph 55 of the Complaint.

56. **Answer:** MLBP denies knowledge or information sufficient to form a belief as to the truth of Paragraph 56 of the Complaint, and on that basis denies the same.

57. **Answer:** MLBP denies each and every allegation set forth in Paragraph 57 of the Complaint.

58. **Answer:** Paragraph 58 of the Complaint does not call for an answer.

## **AFFIRMATIVE DEFENSES**

MLBP asserts the following affirmative defenses, without conceding that it has the burden of proof or persuasion as to any of them:

### **First Affirmative Defense**

A-B has failed to state claims for which relief may be granted.

### **Second Affirmative Defense**

The April Letter of Intent is not a binding or enforceable agreement.

**Third Affirmative Defense**

MLBP and A-B never reached a meeting of the minds on all material terms necessary for a binding and enforceable contract.

**Fourth Affirmative Defense**

A-B is barred from obtaining the relief it seeks because A-B did not deal with MLBP in good faith.

**Fifth Affirmative Defense**

The relief requested by A-B is barred by virtue of Plaintiff's fraud, deceit, concealment, misrepresentations, and/or unclean hands.

**Sixth Affirmative Defense**

A-B fraudulently induced MLBP and MLB in connection with the negotiations leading up to the April Letter of Intent. On July 13, 2009, David Peacock made a material representation to MLB and MLBP that Major League Baseball was and would remain A-B's top, number one sports property in the United States. This representation was material and MLBP reasonably relied upon it in connection with the April Letter of Intent. Further, at the time A-B fraudulently induced MLBP to execute the April Letter of Intent, A-B withheld from MLBP the material fact that A-B was about to sign a promotional rights agreement with the National Football League that would make it impossible for Major League Baseball to be A-B's top, number one sports property in the United States.

**Seventh Affirmative Defense**

A-B's claim is barred by virtue of estoppel, laches and/or waiver.

## **COUNTERCLAIM**

MLBP alleges the following, upon knowledge as to its own respective acts, and upon information and belief as to all other matters, as its counterclaim against A-B:

### **NATURE OF THE CASE**

1. This dispute arises from A-B's attempt to turn what in this case is plainly a non-binding letter of intent (the "April Letter of Intent") between A-B and MLBP into an enforceable agreement for exclusive promotional rights for 2011 and beyond. In that April Letter of Intent, both parties expressly recognized that they would need to negotiate a definitive "Promotional Rights Agreement" containing all of the terms and conditions necessary to grant A-B the promotional rights it sought from MLBP. The April Letter of Intent also provided that A-B would not receive those key promotional rights until the parties finished and signed the definitive Promotional Rights Agreement. The parties never negotiated and executed such a definitive Promotional Rights Agreement because, just days after the signing of the April Letter of Intent, A-B reneged on its promise to MLBP that was the very foundation of the transaction contemplated by the parties.

2. Specifically, in a meeting on the day of the Major League Baseball All-Star Game in 2009, attended by (1) MLB's President and Chief Operating Officer, (2) MLB's Executive Vice President for Business (and MLBP President), and (3) MLBP's head of sponsorship, the President of A-B (David Peacock) promised MLB and MLBP that Major League Baseball would continue to be, as it had been in prior years, A-B's top, number one sports property in the U.S. For MLBP, this promise was a fundamental predicate to its willingness to move forward with A-B to the April Letter of Intent stage and to negotiate to the final contracting stage.

3. Unbeknownst to MLBP, on information and belief, A-B had no intention of fulfilling the promise Mr. Peacock had made to MLB's and MLBP's top executives. Indeed, a

mere seven business days after the April Letter of Intent, A-B announced publicly that it had entered into a promotional rights agreement with the National Football League (“NFL”) that on information and belief was unprecedented in size and scope, and that made it impossible for A-B to fulfill its promise to continue to make MLBPA its top, number one sports property in the U.S.

4. After the NFL transaction was announced, MLBPA inquired as to how, given A-B’s agreement with the NFL, A-B could make good on its promise. In the ensuing weeks and months, A-B made clear that it had no intention of making good on its promise. Indeed, rather than attempt to make good on its commitment to continue to make Major League Baseball its top, number one sports property in the US, A-B has instead embarked on a campaign to attempt to bully MLBPA into an agreement. That campaign has included, but has not been limited to, A-B’s asserting that it has a binding agreement with MLBPA when it has none, the sending of threatening letters to other beer companies to scare them away from doing business with MLBPA, the filing of this meritless lawsuit without even the courtesy of advance notice to MLBPA, A-B’s longstanding business partner, and the use of the press to publicize A-B’s false version of events in attempt to embarrass and intimidate MLBPA.

5. This counterclaim seeks a declaration that there is no binding agreement between MLBPA and A-B for A-B to be MLBPA’s exclusive malt beverage sponsor as of January 1, 2011.

#### **THE PARTIES**

6. MLBPA is a New York corporation with its principal place of business at 245 Park Avenue, New York, New York 10167. MLBPA has the right to license for sponsorships, advertising, marketing, publicity and promotional purposes the use of the names, logos, uniform designs and other property rights owned by it, the Office of the Commissioner of Baseball, each of the 30 Major League Baseball Clubs, and their respective affiliated entities (collectively, the

“MLB Marks”). MLBP is also responsible for the protection of, and enforcement of rights in, these MLB Marks.

7. Upon information and belief, A-B is a Missouri corporation with its principal place of business at One Busch Place, St. Louis, Missouri 63118. A-B is a brewer of malt beverages, including brands such as Budweiser and Bud Light. A-B’s products are sold throughout the United States and in the State of New York, including this judicial district.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this action (1) under 28 U.S.C. §§ 1332 because the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs and the matter is between a resident of Missouri and a resident of New York; and (2) under principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over A-B because A-B sells products, offers products for sale, and solicits, transacts, and conducts substantial business in the State of New York, including within this judicial district. Upon information and belief, A-B also has corporate offices that are located in this judicial district.

10. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in this district and A-B is subject to personal jurisdiction in this district.

11. This is an appropriate action for declaratory relief under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202. There currently exists an actual, justiciable controversy between the parties regarding whether the April Letter of Intent is a binding agreement, and this controversy is of sufficient immediacy to warrant judicial intervention and declaratory relief.

## **BACKGROUND FACTS**

### **History of the Relationship Between the Parties**

12. MLBP and A-B have had a longstanding sponsorship relationship.

13. The MLBP/A-B relationship has historically been memorialized in successive definitive promotional rights agreements, the most recent of which was executed on June 18, 2008, covering a term starting on January 1, 2007 and expiring on December 31, 2010 (the “Expiring Promotional Rights Agreement”).

14. In 2008, A-B was acquired by InBev, a Belgian brewing company.

15. Following the acquisition, many of MLBP’s business contacts at A-B left the company, and there was information disseminated in the marketplace that A-B’s commitment to sports sponsorships was changing, and that A-B would be spending less on sports-related sponsorship and promotions.

### **A-B Requests the July 14, 2009 Meeting with Top MLB & MLBP Management**

16. In or about May 2009, A-B requested a meeting with top management of MLB and MLBP.

17. The meeting was held in St. Louis on July 14, 2009, the morning of the 2009 Major League Baseball All-Star Game (the “July Meeting”).

18. In attendance at the July Meeting on behalf of MLB and MLBP were Robert DuPuy, President and Chief Operating Officer of MLB; Tim Brosnan, Executive Vice President for Business of MLB and President of MLBP; and John Brody, a Senior Vice President in Corporate Sales & Marketing of MLBP.

19. In attendance at the July Meeting for A-B were David Peacock, President of A-B; Kathy Casso, A-B's Director of Sports Marketing; and Dan McHugh, A-B's Vice President of Media, Sponsorship & Activation.

20. At the July meeting, an initial general discussion occurred concerning the many personnel changes in the hierarchy at A-B, in particular in sports marketing and their potential impact on the A-B/MLBP relationship. Particular inquiry was made of Mr. Peacock concerning his personal and professional standing at A-B in light of InBev's acquisition of A-B.

21. At the July Meeting, Peacock reaffirmed A-B's commitment to sports sponsorships and promotions generally, and Major League Baseball in particular.

22. Specifically, Peacock stated that Major League Baseball was A-B's top, number one sports property in the U.S., and promised MLBP and MLB that Major League Baseball was A-B's top, number one sports property in the U.S. Other, similar representations were repeatedly made by Peacock to MLB and MLBP at the July meeting.

23. Peacock's promise that MLBP would be A-B's top, number one sports property in the U.S. was fundamental to MLBP's desire and willingness to continue a promotional relationship with A-B.

**The Non-Binding April Letter of Intent**

24. Following the July Meeting, and in reliance on the promises made by A-B, MLBP began working on a proposal for business terms for a potential renewal of the Expiring Promotional Rights Agreement.

25. On December 9, 2009, MLBP sent a proposed letter of intent to A-B (the "December 9 Draft LOI").

26. The December 9 Draft LOI is explicitly limited to outlining the basic business points of a potential transaction between A-B and MLBP concerning promotional rights.

27. Although A-B acknowledged receipt of the December 9 Draft LOI and promised to get back to MLBP in the “next week to discuss next steps,” A-B stalled for months before responding.

28. Specifically, in or about early January 2010, A-B told MLBP that A-B would not have a response to the December 9 Draft LOI until late January or February. Then, in mid-February 2010, A-B delayed negotiations again, telling MLBP that A-B would not have a response to the December 9 Draft LOI until March 1, 2010. However, March 1 passed without a response from A-B.

29. A-B did not provide a response to the December 9 Draft LOI until March 26, 2010.

30. Shortly after providing its response, and despite months of inactivity on the part of A-B, A-B suddenly began pressing hard for MLBP to finalize a letter of intent.

31. On or about April 22, 2010, A-B and MLBP reached tentative deal terms to be included in a letter of intent regarding a renewed sponsorship agreement.

32. On April 23, 2010, A-B and MLBP exchanged the executed April Letter of Intent by email.

33. Like the December 9 Draft LOI, the April Letter of Intent states that it merely “outline[s] the basic business points to be reflected in a promotional rights agreement (‘Agreement’) to be provided,” and that “the Agreement to follow . . . must be executed by Anheuser-Busch prior to any use of Major League Baseball trademarks, service marks, copyright or trade dress” (emphasis in original).

34. Similarly, elsewhere in the April Letter of Intent, it provides that MLB's grant of exclusive promotional rights would not occur until, and therefore was contingent upon, execution of a definitive "Promotional Rights Agreement": "[u]pon execution of the Agreement, MLB will grant to Anheuser-Busch the exclusive rights . . . ."

35. Accordingly, the parties did not intend or understand the April Letter of Intent to be a binding agreement, and knew that a definitive Promotional Rights Agreement would need to be negotiated and signed in order to renew the parties' sponsorship relationship.

36. Indeed, following execution of the April Letter of Intent, A-B itself repeatedly referred in writing to the April Letter of Intent as an "LOI" and offered to "initiate an agreement draft," recognizing that only "elements" of the deal were contained in the April Letter of Intent.

37. The parties further demonstrated their mutual understanding that there was no binding agreement by agreeing not to publicly announce any renewal of their sponsorship relationship in the absence of a signed, definitive Promotional Rights Agreement.

38. For example, in early May, John Brody of MLBP wrote to Brad Brown, Senior Director, Sports Marketing at A-B, "[j]ust want to make sure we are on the same page...we do not do or say anything public about renewal until our contract is done. Agree?" Brown stated in response: "Correct. On the same page."

39. Similarly, in mid-May, after the April Letter of Intent was signed, Brad Brown of A-B referred to the state of negotiations to be a "possible renewal" of the sponsorship relationship.

40. Indeed, as late as September 2010, long after MLBP had informed A-B that A-B had reneged on its promise to continue to make MLBP its top, number one sports property in the US, and the parties therefore had not been able to move forward in negotiating a Promotional

Rights Agreement, Brad Brown at A-B nonetheless continued to refer to the April document as a “LOI” and a draft Promotional Rights Agreement as a “proposed renewal document.”

41. Moreover, the April Letter of Intent does not include, and the parties have not negotiated or agreed upon, all material terms necessary for the parties to continue their sponsorship relationship into 2011 and beyond.

42. Nor have the parties performed on any of the tentative deal points that were included in the April Letter of Intent.

**A-B Reneges on Its Promise to Make MLB Its Top, Number One Sports Property in the U.S.; MLB Continues to Negotiate with A-B in Good Faith**

43. On the afternoon of May 4, 2010, it was publicly announced that A-B would become the exclusive sponsor of the NFL in 2011 and beyond.

44. The size and scope of A-B’s sponsorship agreement with the NFL would make it impossible for A-B to keep its promise that MLB would remain A-B’s top, number one sports property in the U.S. in 2011 and beyond.

45. Following announcement of A-B’s deal with NFL, MLB continued to negotiate in good faith with A-B regarding a potential Promotional Rights Agreement between the parties for 2011 and beyond.

46. However, these discussions were not fruitful because A-B refused to fulfill its promise to MLB to make MLB A-B’s top, number one sports property in the U.S.

**Injury to MLB & A-B’s Efforts to Intimidate the Market**

47. Any exclusive negotiating period granted to A-B by virtue of the Expiring Promotional Rights Agreement expired on August 14, 2010.

48. On September 17, 2010, MLB advised A-B of its intent to offer its promotional rights to other malt beverage companies.

49. In response, A-B has undertaken efforts to intimidate malt beverage companies with whom MLBP might negotiate for a new promotional rights agreement.

50. Specifically, on October 8, 2010, A-B issued letters to five separate companies threatening them with legal action if they were to negotiate with MLBP regarding any promotional rights agreement and suggesting that MLBP was acting unlawfully in offering its promotional rights to market.

51. A-B's actions in threatening malt beverage companies and suggesting that MLBP is acting unlawfully or unethically has devalued MLBP's brand in the market and harmed MLBP's reputation and goodwill.

### **COUNT I**

#### **(Declaration That the April Letter of Intent Is Not a Binding Agreement)**

52. MLBP repeats and realleges each and every allegation contained in paragraphs 1 through 51 as if fully set forth herein.

53. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, this Court may declare the rights and other legal relationships of any interested party seeking such declaration.

54. The April Letter of Intent is not a binding agreement.

55. MLBP has the right to negotiate and/or contract with any malt beverage company concerning a promotional rights agreement to take effect on or after January 1, 2011.

56. MLBP has advised A-B of its intent to negotiate a potential promotional rights agreement with other malt beverage companies, and A-B has threatened legal action in the event MLBP negotiates and/or contracts with another malt beverage company concerning a

promotional rights agreement to take effect on or after January 1, 2011. Indeed, A-B has in fact filed suit.

57. As a result of the foregoing, an actual case and controversy exist between MLBP and A-B concerning whether the April Letter of Intent is a binding agreement upon the parties.

58. MLBP seeks a declaratory judgment that the April Letter of Intent is not a binding agreement.

**PRAYER FOR RELIEF**

WHEREFORE, MLBP respectfully prays that this Court enter judgment for MLBP and against A-B as follows:

- A. Dismissing all counts of A-B's Complaint with prejudice;
- B. Declaring that the April Letter of Intent is not a binding agreement;
- C. Granting MLBP such other and further relief, in law and/or in equity, as the Court deems just and proper.

Date: December 9, 2010

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