
Disclosure In Indonesia's Digital Marketing Regulations: Contract Validity And Consumer Protection

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Abstract—The use of social media in Indonesia continues to grow, not only for social activities but also for economic activities. Deals in economic activities on social media conducted by brands often involve influencers to promote goods or services. This article analyses digital marketing conducted by influencers through social media under Indonesian law. The analysis is performed based on various regulations applicable in Indonesia, such as regulations on electronic commerce and marketing, agreements, and consumer protection, by first looking at rules on digital marketing in various countries. Several countries have more specific regulations, including endorsement guides, emphasizing disclosure obligations and minimum clauses that must be included in contracts between brands and influencers. Contracts between brands and influencers need to be reviewed to ensure that the clauses agreed between the brand and the influencer have an impact on fulfilling the legal requirements of a sales and purchase contract, in this case, relating to a free agreement between the brand and the consumer and by the principles of consumer protection. Based on the review conducted, various existing regulations must be reviewed for their suitability in developing community activities. Further, the urgency of establishing a special regulation on digital marketing conducted by influencers through social media needs to be reviewed.

Keywords: Brand; contract; digital marketing; disclosure; influencer

Introduction

We Are Social, a New York-based social media agency, has regularly researched social media usage activities in several countries, including Indonesia. Several data collected through research conducted by the agency are about the number of social media users in Indonesia in 2025, which will reach 143 million people or 50.2% of the total population, increased by 2.9% from 2024, which was 139 million people. (*Digital 2025: Indonesia*, n.d.) Departing from these data, which show the development of the social media ecosystem in Indonesia, then encourages the rapid marketing by brands through social media or what is often referred to as digital marketing as an effort to attract consumer attention more quickly and precisely compared to marketing through traditional media such as television, newspapers, and others. In addition to influencing the way brands market their products, the development of social media use in Indonesia has also given rise to a new profession called influencer, defined as a person who can influence others to decide to buy a product. This ability is obtained, among others, because of his authority, knowledge, or relationship with his

followers on social media.

The influencer profession, more precisely called Social Media Influencer (SMI), has a close relationship with brands as part of the digital marketing process carried out by brands in marketing their products in the form of goods or services. The relationship is then realized in various marketing mechanisms such as affiliate marketing, endorsements, etc. Marketing by influencers through social media to their followers as consumers creates a relationship between influencers and their followers as consumers, where influencers, as an extension of the brand, are also responsible for the content shared about the goods or services being marketed. In digital marketing by influencers, the consumer's decision to commit themselves to a sale and purchase transaction of goods or services (offered through social media by the influencer) will be influenced to some extent by the content shared. Since 2015, the role of influencers has become essential in shaping consumer trust and desire to consume a product.(Goantă & Ranchordás, 2020) Therefore, regulating social media content as a form of digital marketing needs to be reviewed from the perspective of agreement law, especially regarding the formation of agreements and consumer protection law.

This article will analyse several Indonesian regulations on agreements, digital marketing, and consumer protection, including the Civil Code, Law No. 8/1999 on Consumer Protection, Government Regulation No. 80/2019 on Trading Through Electronic Systems, and Minister of Trade Regulation No. 50/2020 on Provisions for Business Licensing, Advertising, Guidance and Supervision of Business Actors in Trading Through Electronic Systems. Several legal umbrellas will explore how digital marketing practices and their relationship with influencer relations, brands, and consumers have been accommodated in existing laws and regulations. In addition, with the rapid pace of digital marketing practices through social media carried out by influencers with various issues and dynamics, it is necessary to review the urgency of establishing a separate regulation governing digital marketing practices carried out by influencers, as some apply in several other countries.

Method

The method used in this study is the normative legal research method in which the author searches for legal materials, both primary legal materials such as laws and regulations in the fields of advertising, agreements, and consumer protection, and secondary legal materials in the form of journal articles and other documents related to digital marketing.

Discussion

The Word of Mouth Marketing Association defines influencer marketing as: 'the act of a marketer identifying and engaging influencers to share information with influences in pursuit of a business goal.'(Goantă & Ranchordás, 2020) In digital marketing, companies approach influencers by using influencers' services to share information about the company's products. In the online community, influencers in social media communication are identified as authentic and timeless individuals, attracting brands to utilize influencers in marketing to achieve their business goals. The influencer profession departs from the various activities they do on social media, among others, through sharing multiple kinds of commercial and non-commercial content, such as multiple daily activities.

Influencers as a profession can be categorized based on various indicators such as type of content shared, origin of popularity, number of followers on social media, and others. The implications of this difference include the extent to which the influencer understands their role as a public figure and the impact of the obligation to disclose information on a sponsorship. Influencers who gained popularity due to their profession as actors, models, singers, and other professionals in showbusiness are more obliged to disclose the sponsorship content they share. On the other hand, influencers who are not originally public figures and gain popularity through the content they share on social media, also known as "peers," are only obliged to

disclose as long as they have reached a certain number of followers, which shows their power and ability to influence their followers on social media.(Goantă & Ranchordás, 2020)

Related to influence analytics, influencers are differentiated based on the influencer's influence measured through the number of followers, subscribers, views, likes, dislikes, retweets, and impressions on their social media accounts. This indicator based on influence analytics will also be a consideration for brands or digital marketing companies to determine the compensation given to the influencer, either based on the number of followers or the number of viewers, where the influencer must report the data as part of the agreement. Furthermore, the fourth indicator is based on the influencer's legal status, distinguishing between influencers with a brand and company as their professional identity, influencers who act as freelancers for a specific "marketing company," and influencers who are consumers.(Goantă & Ranchordás, 2020) The nature of influencers in digital marketing will influence the business model brands choose when collaborating with influencers. There are several business models that brands can choose from in collaborating with influencers, which are determined based on the type of product to be marketed, the influencer's category, and others. Several business models that brands and influencers commonly use are affiliate marketing, exchange of goods and services, endorsement deals, and merch category. These various business models will then be accommodated through contracts between brands and influencers that contain clauses tailored to the collaboration's characteristics and the parties' needs and agreements. As a new type of agreement, these contracts in digital marketing still need to have a complete pattern or minimum clauses that must exist, at least in Indonesia. As described in the introduction, the regulation of contracts between brands and influencers in Indonesia should be considered, given the development of social media utilization in Indonesia as a digital marketing platform. To explore the various regulations on digital marketing between brands and influencers, the next section will review several regulations in various countries.

Digital Marketing Arrangements by Influencers in Different Countries

Many countries, such as the United States, United Kingdom, Australia, and Singapore, have guidelines on implementing digital marketing in their countries, including regulating the relationship between brands, influencers, and consumers (social media users).

United States of America

One reference is the regulation of endorsements through the Endorsement Guides issued by the Federal Trade Commission (FTC) of the United States. The Endorsement Guides outline the influencer's obligation to provide information about the product being marketed based on his/her experience; the information provided through endorsements should not reflect impressions that are inconsistent with the reality of the product being marketed, ensuring that the influencer's experience of the product being marketed will be the same as that of the consumer; the influencer's obligation to disclose in his/her content that he/she is not an actual consumer in the marketing; and the influencer's obligation to disclose that the marketing is done based on his/her relationship with the brand through the endorsement mechanism. (Carpenter & Ii, 2021) The FTC recommends that information containing disclosure about the background of the content shared by the influencer, such as stating that the content was created based on the collaboration between the influencer and the brand, should be easy to read by potential consumers in terms of font selection and location, and then conveyed in sentences that potential consumers easily understand. In addition, the FTC also recommends the importance of a written contract between the brand and the influencer, which includes the obligation of the parties to comply with the provisions issued by the FTC and the right for the brand to terminate the agreement if the influencer does not comply with the provisions in marketing through social media.(Carpenter & Ii, 2021). In 2019, the FTC published "Disclosures 101 for Social Media Influencers". The guide focuses on the influencer's obligation to provide disclosures and how, in such a relationship, the influencer is not immune from potential legal liability for consumer harm. It also provides practical guidance on how influencers disclose material connections between influencers and brands on social media "clearly and conspicuously."(Bannigan & Shane, 1976) Regarding the role of the FTC, apart from being a regulator that regulates the relationship between brands, influencers, and

consumers, the FTC is also authorized to supervise marketing content created by brands, agencies, public relations, and influencers, whether based on consumer complaints or not and warn influencers about their disclosure obligations in their content.(Felkoski, n.d.)

United Kingdom

Under the Consumer Protection Regulator of the United Kingdom, social media marketing must include a disclosure stating that the content created by the influencer is the result of a collaboration, including paid collaboration between the influencer and the brand. If not explicitly stated in the disseminated content, it will be categorized as a fraudulent commercial practice. In January 2019, The Competition and Markets Authority published guidance for influencers on the obligation to disclose material or commercial relationships between brands and influencers to comply with consumer protection provisions. In addition to The Competition and Markets Authority, the UK also has marketing regulations, namely The Advertising Standards Authority (ASA), published by The Committee on Advertising Practice (CAP). Responding to the development of digital marketing, in September 2018, CAP also published a guide entitled "An Influencer's Guide To Making Clear That Ads Are Ads," which emphasizes that influencers as parties to digital marketing must comply with regulations in the field of marketing and consumer protection. (Vargas Portillo, 2020)

Australia

In 2020, Australia published the Australian Influencer Marketing Code Of Practice published by the Australian Influencer Marketing Council (AIMCO). The Code of Practice addresses influencer 'vetting,' brand safety, disclosure obligations under the Australian Consumer Law, contracts, and intellectual property rights, among others, for talent representatives or managers, media or PR agencies, marketplaces, advertisers, and other platforms related to the influencer community. In the Code of Practice, AIMCO regulates the process of checking the suitability of an influencer to represent a brand, also known as "vetting". Furthermore, in the advertising disclosure obligation, where the influencer has a reciprocal material relationship with the brand, there is an obligation to disclose the shared content and regulate the procedure for submitting disclosure.(ACCC DIGITAL PLATFORMS ENQUIRY REPORT ON SOCIAL MEDIA 2023 AiMCO SUBMISSION, 2022)

Next is regulating the brief or contract between the brand and the influencer. The Code of Practice has guidelines regarding the minimum clauses that must be regulated in the contract, including intellectual property rights, brand reputation, legal rules regarding compliance, remuneration, exclusivity, and others. In addition, the Code of Practice also regulates the provisions for the submission of metrics data by influencers, including data on the number of followers, clicks, views, and others, which will be one of the considerations in implementing influencer cooperation with brands.

Singapore

Singapore has the Singapore Code of Advertising Practice (SCAP) to regulate marketing communications and social media. The SCAP, similar to the provisions in several other countries described above, also regulates the obligation for influencers to include disclosures. Disclosure must be included in sponsorship arrangements and commercial relationships except in the following cases: the brand utilizes the services provided by the social media platform to increase sales; the brand uses its social media to market products; and the dissemination of content as a marketing tool does not result in any incentive or other financial benefit to the influencer. SCAP also provides guidance on disclosure forms based on the form of content to be shared. A commercial relationship under SCAP is one in which a social media content creator (in this case, an influencer) creates content for a client (in this case, a brand) and is then incentivized for the content created.

Based on a search of various regulations or guidelines on digital marketing in various countries, especially those involving influencers, several conclusions can be drawn: all four countries require

influencers to disclose the marketing content they share. This practice is essential, among others, to demonstrate the existence of a commercial relationship between the influencer and the brand that will influence consumers' (social media users) decision in agreeing to a sale or purchase transaction of goods or services. In addition to the disclosure obligation, several countries also regulate brands' obligation to institutionalize their legal relationship with influencers through a written contract with a minimum number of clauses. Contracts between brands and influencers should contain at least the following clauses:

- product as the marketing object ;
- social media that will be used to market the product;
- technicalities of creating ads or adverts, how to deliver marketing material through content;
- intellectual property rights over the content;
- rights to images or photographs;
- exclusivity of the influencer with the brand (Vargas Portillo, 2020).

The existence of the minimum clause, among others, is an effort to provide legal certainty and protection for the parties and consumers.

Digital Marketing from Indonesian Legal Perspective

Several laws and regulations in Indonesia have regulated marketing, including digital marketing, among others, through Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trading Through Electronic Systems and various other regulations. In Chapter VIII Article 33, paragraph (2) of Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trading Through Electronic Systems (Peraturan Pemerintah Nomor 80 Tahun 2019 Tentang Perdagangan Melalui Sistem Elektronik, 2019), which regulates explicitly Electronic Advertising, domestic and foreign traders, and Trading Through Electronic Systems Operators (PPMSE) within and outside the country must comply with the provisions of laws and regulations in the field of broadcasting, protection of privacy and personal data, consumer protection, and not contrary to the principles of fair business competition. Then, in Article 34, paragraph (1), the substance or material of Electronic Advertising is prohibited from contradicting consumer rights and the principles of fair business competition by the provisions of laws and regulations. Article 34, paragraph (2) further stipulates that business actors who violate the provisions in paragraph (1) must stop advertising these goods and services. Article 35 emphasizes that every party that creates, provides, facilitates, and disseminates Electronic Ads must ensure that the substance or material of the Electronic Ads submitted does not conflict with the provisions of laws and regulations and is responsible for the substance or material of the Electronic Ads.

In addition to the Government Regulation on Trading Through Electronic Systems, electronic advertisements are also regulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 50 of 2020 concerning Provisions on Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems. In addition to re-emphasizing the obligations of business actors (traders) and PPMSE as stipulated in the Ministerial Regulation on Trading Through Electronic Systems, this Ministerial Regulation in Article 19 paragraph (2) also regulates the criteria for serving electronic advertisements. (Peraturan Menteri Perdagangan Nomor 50 Tahun 2020 Tentang Ketentuan Perizinan Usaha, Periklanan, Pembinaan, Dan Pengawasan Pelaku Usaha Dalam Perdagangan Melalui Sistem Elektronik, 2020) Electronic Advertising Displaying the results of reviews and testimonials from consumers who have used goods and / or services must include/have and ensure the correctness of the legal subjects' identity information and be carried out responsibly. Looking at the existence of these two regulations, which seek to adapt laws and regulations to the development and novelty of marketing through electronic systems, it can be seen that existing laws and regulations have not regulated the ethics or provisions of digital marketing by influencers, including provisions regarding the obligation to include

disclosures as required by several countries, so that consumers will be vulnerable to misperceptions about whether or not there is a commercial relationship between influencers and brands in the marketing content received. In addition, existing regulations do not require, or at least guide the minimum clauses that should be included in the contract between brands and influencers as stipulated in the Regulation of the Minister of Trade No. 71/2019 on the Implementation of Franchising in Appendix II contains the Materials or Clauses of the Franchise Agreement.

Apart from laws and regulations, marketing or advertising is also regulated by the Ethics of Indonesian Advertising (EPI). (*Etika Parimara Indonesia*, n.d.) In the amended Indonesian Advertising Ethics (EPI) document published in 2020, influencers are referred to as endorsers. In the amended EPI, only a few points mention the provision of endorsements, namely that endorsements can only be made by individuals, not representing institutions, groups, classes, or the wider community, and children may not act as endorsers. Specifically regarding social media advertisements, the amended EPI also stipulates that it is not allowed to use personal social media to broadcast commercial advertisements unless the commercial advertisement element has been clearly mentioned beforehand. This provision is in line with the spirit of disclosure. However, it does not explicitly regulate the criteria for the substance of the disclosure and attaches the obligation to the advocate. Furthermore, regarding brand ambassadors, the actor as a brand ambassador must be a person who uses the related product and does not use competing products during the validity period of the agreement, which is at least the same time as the broadcasting period of the advertisement. EPI, which is a value system and integrated guidelines for a code of conduct and code of practices that apply to all Indonesian advertising actors, also contains sanctions for advertising actors who violate the provisions contained in EPI; however, the validity of EPI as a code of conducts and code of practices needs to be further reviewed.

Provisions regarding the marketing or advertising of goods or services cannot be separated from the interest in protecting consumers as the target of marketing, including that carried out by brands through influencers. Therefore, it is necessary to review the extent to which Law No. 8/1999 on Consumer Protection regulates offers (marketing) conducted by business actors. Provisions regarding marketing in Law No. 8/1999 include Article 9, Article 10, Article 17, and Article 20. (Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, 1999) Article 9 prohibits business actors from offering, promoting, and advertising goods and/or services incorrectly and/or as if the goods and/or services have a certain quality or are/are not in a specific condition. Article 10 contains a prohibition for business actors in offering goods and/or services intended for trading are prohibited from offering, promoting, advertising, or making statements that are incorrect or misleading regarding the price of goods, discounts, conditions, and/or uses of goods/services. Article 17 prohibits business actors from producing advertisements that deceive consumers about the quality, quantity, materials, prices, and product information and violate ethics and/or provisions of laws and regulations on advertising. Based on the regulation in the Consumer Protection Law, it can be seen that there is no regulation that specifically and explicitly regulates marketing conducted by influencers through social media, even though the provisions above are also binding for business actors in marketing their goods or services through social media. The legal vacuum is understandable as the law, born in 1999, has yet to project the birth of digital marketing, especially those conducted on social media through influencer figures.

To conclude this sub-chapter, it needs to be restated that the regulations available in Indonesia have not accommodated and are adequate for the development of digital marketing in Indonesia, which is proliferating and has become a means that plays a vital role in the decision-making process by consumers to consume goods or services. For this reason, regulations containing digital marketing guidelines that have been initiated through the Regulation of the Minister of Trade on the Provisions of Business Licensing, Advertising, Development, and Supervision of Business Actors in Trading Through Electronic Systems need to be complemented with digital marketing guidelines for those carried out by influencers through various business models, including affiliate marketing, endorsement deals, merch categories and exchange of goods and/or services.

The Urgency of Disclosure Obligations in Digital Marketing Contracts and its Relationship with Contract Validity and Consumer Protection

In practice in the United States, with the enactment of the Endorsement Guides published by the FTC, parties (brands and influencers) must base their contracts on the Endorsement Guides (Coop, n.d.). Brands or companies that use the services of influencers to market their products are fully responsible for the substance of the content conveyed by influencers to potential consumers through social media (Casale, 2019). The FTC requires influencers to disclose their relationship with the brand explicitly, whether financial, employment, personal, or familial. This relationship needs to be known by consumers because certain relationships between influencers and brands whose products are promoted will more or less influence consumers in making decisions to consume a product or not (Bannigan & Shane, 1976). In endorsements, the endorsement content must represent an honest opinion based on the endorser's experience; in this case, the influencer and the content delivered must not create consumer misunderstandings. If consumers assume that the influencer has used the product being marketed through their content, then the influencer must have used it before it was publicized (Bannigan & Shane, 1976).

Furthermore, regarding financial relationships or material connections, the FTC regulates that if an influencer has a material connection, it must be disclosed to consumers. Material connections as compensation or incentives for influencers include payment of money, free products, free tickets, testers, and others (Vargas Portillo, 2020). In digital marketing, there is also the term "deceptive" content. Content is categorized as "deceptive" when it can cause misunderstandings in consumers and influence consumers' decision-making process.

Therefore, influencers need to disclose their content as regulated by several countries. Disclosure, in principle, is defined as information that needs to be conveyed by the influencer regarding the material connection between the influencer and the brand whose products are promoted through the content created and shared by the influencer through social media. The lack of disclosure in digital marketing content can lead to misunderstanding among consumers, who may think that the influencer is giving an honest opinion on a product or service without knowing that the influencer is receiving compensation or incentives for the content. Therefore, disclosure is mandatory as consumer decisions nowadays rely heavily on the information influencers provide (Fadzlina Nawi & Faizol, n.d.). Non-fulfillment of the disclosure obligation, based on the provisions published by the FTC in the United States, creates an obligation for the parties (brand and influencer) to revise the contract between them and even terminate the contract if the influencer does not fulfill its obligation to include a disclosure (Felkoski, n.d.).

The urgency to include disclosures in marketing content shared by influencers is also related to forming an agreement between consumers (marketing recipients) and brands (businesses) that market their goods or services through content created by influencers. From the perspective of agreement law, one of the requirements for the validity of an agreement, as stipulated in Article 1320 of the Civil Code, is agreement. An agreement is formed through a process of offer and acceptance. An offer is defined as a statement of intent containing a proposal to agree, especially regarding the essential elements of the agreement, and acceptance is a statement of agreement from the other party being offered (Hernoko, 2008). An offer is a desire submitted by the person who offers it (offeror) to someone whose purpose is the purpose of his offer for a particular matter or subject of the offer (Simanjuntak, 2011). Offers can be expressed either orally or in direct conversation, or in written offers, or even by gestures or signs or attitudes or even not doing activities at all as long as these methods can be made into a means of communication in submitting offers to the offeree. (Ricardo Simanjuntak, 2011) To reach an agreement, the offer must be followed up with acceptance by the offeree. Acceptance is an attitude of approval from the offeree to the offer submitted by the offeror. An acceptance can be communicated either in writing or orally, or it can also be done silently (Simanjuntak, 2011). Marketing as a form of offer must also be in line with the principles of the offer in the law of the agreement, including that the agreement as a product of offer and acceptance must be formed freely.

Agreement as conformity of wills and statements must be freely expressed and not occur due to

misrepresentation, coercion, fraud, and/or abuse of circumstances. In the context of including disclosures by influencers, not including disclosures in digital marketing content through social media can lead to misrepresentation or even fraud that can make the agreement defective. Misrepresentation occurs when the intentions and statements of each other are compatible, but the intentions of one of the parties or of both are defectively formed (Budiono, 2015). A qualified misrepresentation, or intentional misrepresentation by another party, can become a fraud. Fraud occurs when a series of tricks move others to agree and otherwise would not agree or submit another offer if they knew there was fraud (Hernoko, 2008). Fraud is a statement or action taken to hide or distort the facts, misdisclosure of facts, or concealment of facts that should be notified to the contract partner (Simanjuntak, 2011). Various regulations on contracts after the Civil Code, such as the 1950 Contract Deed, the NBW, and the UPICC, reinterpret the various defects of will factors regulated in the Civil Code. In the 1950 Contract Deed, defects of will that affect the parties' freedom to give an agreement are affected by the compulsion, *undue influence*, fraud, misrepresentation and mistake.

Disclosure, as described earlier, is interpreted as conveying the material connection between the influencer and the brand whose products are promoted through the content created and shared by the influencer through social media, including information on adequate and reliable scientific evidence about the product being marketed (e.g., skincare), as well as the certainty that the content created must be based on the influencer's experience, is essential to convey as a form of anticipation of consumer misunderstanding or misrepresentation of the goods or services offered or as an effort to ensure that the business actor (through the influencer's representation) does not commit fraud through the marketing content shared. In the event of misrepresentation or mistake, especially regarding the nature of the object, it can be a reason for cancellation of an agreement due to non-fulfillment of the conditions of the agreement as stipulated in Article 1449 of the Civil Code. Cancellation of an agreement due to a defect of will or an unfree agreement may only be submitted by the party who experienced the mistake, coercion, or fraud and not by the party who did it (Isnaeni, 2016).

The obligation to include disclosure is also essential to encourage consumer protection. As stipulated in the Consumer Protection Law regarding various obligations and prohibitions for businesses in marketing, the spirit is to prevent consumers from being misled into giving consent to consume marketed goods or services. Therefore, with the development of digital marketing that is not directly conducted by businesses but utilizing the services of influencers, the obligation to include disclosures, especially regarding the commercial relationship between influencers and brands in marketing content through social media, is necessary to provide consumers with the right to correct information about the goods or services to be consumed and ensure that there is no misleading agreement.

Conclusion

Considering the development of social media utilization in digital marketing by brands and influencers in Indonesia and looking at developments in several countries, a more detailed and comprehensive regulation on digital marketing by influencers is required. Several laws and regulations in Indonesia have regulated the way businesses (or in this article referred to as brands) conduct marketing including digital marketing, among others through the Consumer Protection Law, Government Regulation on Trading Through Electronic Systems, Minister of Trade Regulation on Provisions for Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems and Indonesian Advertising Ethics, however, so far these regulations have not regulated contracts between brands and influencers that accommodate essential aspects of agreement law, consumer protection, fair business competition, and protection of intellectual property rights. In addition, there is no provision for influencers to disclose marketing content shared through social media, especially regarding material (commercial) relationships between influencers and brands. It is necessary to seek public awareness in providing free agreements, which in this context are free from misrepresentation and fraud that are prone to occur if influencers and brands do not disclose.

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