

Dark Patterns in India

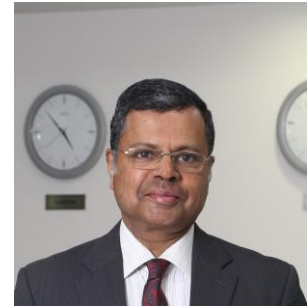
“Hurry! Only 2 pieces left, 100 people viewing the product, make the purchase now or regret later”, “Sign up now and get your first month FREE!”, “Time is Running Out! Don't Let This Opportunity Slip Away!”, “Don't Miss Your Chance! Click Here to Claim Your Discounted Subscription NOW!”; every day, we encounter advertisements that instil a sense of urgency, compelling us to make purchases under the guise of high demand. These advertisements employ practices strategically designed to manipulate users into actions they had not intended.

On November 30, 2023, the Central Consumer Protection Authority notified the Guidelines for Prevention and Regulation of Dark Patterns, 2023 (“Guidelines”). The Guidelines unequivocally prohibit any person or platform from employing “dark patterns”, defined thereunder to mean “any practices or deceptive design pattern using user interface or user interactions on any platform that is designed to mislead or trick users to do something they originally did not intend or want to do, by subverting or impairing the consumer autonomy, decision making or choice, amounting to misleading advertisement or unfair trade practice or violation of consumer rights”. Engagement in practices outlined in the Guidelines automatically qualifies as involvement in a dark pattern, extending accountability across digital entities.

The Guidelines apply to:

- (i) All platforms systematically offering goods or services in India
- (ii) Advertisers
- (iii) Sellers

It is important to note that if any of the dark patterns are regulated under existing laws, the Guidelines are to be interpreted as supplementary provisions rather than derogatory to such laws. This ensures that the Guidelines complement existing regulatory frameworks, providing additional safeguards against deceptive practices without undermining the efficacy of pre-existing regulations. In case of any ambiguity or uncertainty in interpretation of the Guidelines, the final decision rests with the Central Consumer Protection Authority (“CCPA”), constituted under the Consumer Protection Act, 2019 (“Act”).



Dipak Rao
Senior Partner
E: dipak@singhania.in

Activities constituting “Dark Patterns”

1. False Urgency – Deceptive portrayal or insinuation of urgency or scarcity to deceive a user into making an immediate purchase.

If an automobile company advertises its product with a headline “Prices Rising soon” and states that the reason for the rise in the prices is due to anticipation of rise in price of Steel post the implementation of budget proposals, the urgency that is being portrayed does not fall under the category of “false urgency” since it is backed by factual information.

2. Basket Sneaking – Inclusion of extra items during the checkout process on a platform without user’s consent.

A food delivery application automatically includes an INR 2 donation for a specific cause and a tip of INR 20 for the delivery executive during checkout, with these options pre-selected. If the users are not vigilant while placing the order, they inadvertently end up paying for these optional amounts. Users should be given the choice to select these options themselves instead of having them pre-selected on their behalf.

A popular grocery delivery app offers a subscription for free delivery on orders, the app still prompts users to apply a free delivery coupon at checkout, requiring users to apply a coupon for a benefit already covered by their premium membership. The likely motive seems to be catching less attentive users off guard, leading them to overlook applying the coupon and inadvertently incur delivery fees despite having a premium membership.

3. Forced Action - Compelling a user to take an action that requires purchasing additional goods or subscribing to unrelated services or share personal information to buy or subscribe to the goods or services.

A streaming service that initially offers its users access to a basic plan for a fixed monthly fee. After a while, they restrict access to certain popular shows and features, essentially limiting the service to a bare minimum. To regain access to the full catalogue and features, users are required to upgrade to a premium plan at a higher cost. This strategy essentially coerces users into paying more than what they initially signed up for.

4. Subscription Trap – Offering users the option to cancel their subscription yet complicating the process by concealing or elongating the cancellation steps.

In a notable incident involving an online learning application, an authorized representative of the platform approached an individual to purchase their learning app. The individual initially paid INR 5000 in cash and also opted for a loan of INR 60,000 from a finance company recommended by the agent. This loan was to be repaid through monthly instalments. The agent assured the individual that if they were dissatisfied with the product within 15 days of delivery, a full refund could be obtained. Despite attempts to cancel the registration within this window, the individual was asked to pay an additional INR 9498 for cancellation. Moreover, the monthly EMIs continued to be deducted. The District Consumer Disputes Redressal Commission ruled in favour of the

individual, citing unfair trade practices. The learning app was directed to refund the entire amount of INR 65,000, along with the INR 9498, and an extra INR 5000 for the mental distress caused.

5. Interface interference – Design elements that manipulate the user interface by emphasizing specific information while obscuring other relevant information.

During the registration process, a social networking application displays a prompt saying, "Get started by registering with your email." This prompt seemed innocuous, leading the user to input their email address and proceed. However, it turns out to be a deceptive tactic aimed at gaining access to the user's inbox and extracting all available email addresses. Although there is a note explaining what that button does, it is deliberately camouflaged as grey text on a blue background, making it easy to overlook.

6. Bait and Switch - Deceptive advertising tactic where a promised outcome is substituted with a different, often pricier one upon user engagement.

On a travel website, the initial flight prices displayed are surprisingly low and the prices significantly increase during the checkout. This tactic tricks users into thinking they are getting a great deal initially, only to reveal the true, higher prices later in the booking process.

7. Drip Pricing - Several deceptive practices: concealing elements of prices during user interaction, disclosing higher prices post-confirmation, advertising products as free without revealing subsequent costs, or withholding paid services until additional purchases are made.

However, in this scenario, a marketplace e-commerce platform is not held responsible for price variations that result from changes made by third-party sellers or other uncontrollable factors.

While shopping online for a subscription-based service, a consumer selects a subscription plan and proceeds to checkout. The displayed price appears seemingly reasonable. After entering payment details and completing the purchase, the consumer discovers they've been charged more due to hidden fees. This practice, known as drip pricing, conceals the total cost until after the purchase is confirmed, exploiting consumers' trust.

8. Disguised Advertisement - Deceptive practice of presenting advertisements in formats that resemble other types of content, such as user-generated content or news articles designed to blend with the interface to trick consumers into clicking on them.

An advertisement on an e-commerce website resembles the host website's "Sign up" button. It's important to clearly differentiate ads so that consumers can recognize them easily. Deceiving consumers into clicking ads is a deceptive practice that should be avoided.

9. Nagging - Manipulative design tactic causing users to experience excessive requests, information overload, or interruptions unrelated to their intended purchase, disrupting the transaction process, unless explicitly permitted by the user.

A company engages in repeated phone calls to pressure or persuade consumers to purchase their product or service. These persistent and unwanted calls can create a sense of annoyance and discomfort for the consumer, leading them to feel pressured into making a purchase they may not have initially intended to make.

10. SaaS Billing - Recurring collection of payments from consumers within a Software as a Service (SaaS) business model, leveraging positive acquisition loops in recurring subscriptions to discreetly obtain funds from users.

A user signs up for a free trial on an OTT platform to access exclusive content. During the signup process, they are not informed that their free trial will automatically convert to a paid subscription after a certain period. As a result, when the trial ends, the user is suddenly charged for the subscription without receiving any prior notification or reminder. This lack of transparency in billing practices can lead to user frustration and dissatisfaction.

Contravention and Penalty

Dark Patterns, as defined under the Guidelines, refer to “deceptive design patterns” within user interfaces crafted to mislead or deceive users into performing actions they did not originally intend. Such deceptive practice is an unfair trade practice under the Act, which empowers the CCPA to intervene and order discontinuance of the practice. Failure to comply with CCPA directives attracts punishment with imprisonment up to six months and/or fine which may extend to twenty lakh rupees.

Conclusion

The implementation of the Guidelines will bring about significant changes for covered entities, requiring modifications to their user interfaces to eradicate dark patterns. The Guidelines represent a positive stride towards safeguarding consumer interests. Nonetheless, the true measure of their effectiveness lies in their enforcement, which will ultimately shape their impact on consumer protection.

However, the practical application of the Guidelines is still lacking. The lack of enforcement, as seen in the absence of dark pattern findings by CCPA, raises questions about why real-life examples are not addressed despite their prevalence in daily experiences. Many entities engage in dark patterns without facing consequences, highlighting gaps such as redundancies, contradictions, and discretionary practices in the Guidelines.

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