



## Tax alert: The Guidelines for Prevention and Regulation of Dark Patterns, 2023

### 6 December 2023

The Central Consumer Protection Authority (CCPA) notified the final set of guidelines on 30 November 2023, for the prevention and regulation of dark patterns on platforms offering goods and services in India, through an online interface.

The notification has come after the Department of Consumer affairs (DoCA), in September 2023, released draft guidelines for the prevention and regulation of dark patterns for public consultation. The final guidelines have identified 13 types of dark patterns, up from the 10 identified earlier as part of the initial draft.

### In a nutshell

Key aspects of the guidelines are as captured below:



- The guidelines restrict the use of dark patterns designed to mislead or trick users or impair consumer decision



- Apart from the 10 practices provided in the draft guidelines (September 2023), 3 new dark pattern practices have been added to the final guidelines - trick question, SaaS billing and rogue malwares



- Practices covered under the guidelines would be considered as misleading advertisement, subject to penalty under Section 89 of The Consumer Protection Act, 2019 – 2 years imprisonment and INR 1 mn penalty (extended to 5 years and INR 5 mn for subsequent offence)



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## Key highlights:

The Guidelines define “Dark Patterns” as any practice or deceptive design pattern using user interface or user experience interactions on any platform, 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.

The 13 identified dark pattern practices are as mentioned below:

- **False Urgency:**
  - Falsely stating or implying the sense of urgency or scarcity to mislead a user into making an immediate purchase or taking an immediate action, leading to a purchase. It includes:
    - showing false popularity of a product or service to manipulate user decision.
    - stating that quantities of a particular product or service are more limited than they are.
- **Basket sneaking:**
  - Inclusion of additional items such as products, services, payments to charity or donation, at the time of checkout from a platform, without the consent of the user, such that the total amount payable by the user is more than the amount payable for the product or service chosen by the user.
- **Confirm shaming:**
  - Using a phrase or video or audio or any other means to create a sense of fear or shame or ridicule or guilt in the mind of the user to nudge them to act in a certain way that results in the user purchasing a product or service from the platform or continuing a subscription of a service.
  - Primarily aimed at driving commercial gains by subverting consumer choice.
- **Forced action:**
  - Forcing a user into taking an action that would require the user to buy any additional goods or subscribe or sign up for an unrelated service or share personal information to buy or subscribe to the product or service originally intended by the user.
- **Subscription trap: (the process of)**
  - making cancellation of a paid subscription impossible or a complex and lengthy process;
  - hiding the cancellation option for a subscription;
  - forcing user to provide authorisation for auto debits for availing a free subscription;
  - making instructions of cancellation of subscription ambiguous, latent, confusing, cumbersome.
- **Interface interference:**
  - A design element that manipulates the user interface in ways that (a) highlights certain specific information; and (b) obscures other relevant information relative to the other information; to misdirect a user from taking an action as desired.
- **Bait and Switch:**
  - Advertising a particular outcome based on user’s action but deceptively serving an alternate outcome.
- **Drip pricing:**
  - elements of prices not revealed upfront or revealed surreptitiously within the user experience;
  - revealing the price post-confirmation of purchase, i.e., charging an amount higher than the amount disclosed at the time of check-out;

- a product or service is advertised as free without appropriate disclosure of the fact that the continuation of use requires in-app purchase;
- preventing user from a service already paid for unless something additional is purchased.
- **Disguised advertisement:**
  - Posing, masking advertisements as other types of content such as user generated content or news articles or false advertisements, designed to blend in with the rest of an interface to trick customers.
- **Nagging:**
  - A practice due to which a user is disrupted and annoyed by repeated and persistent interactions, in the form of requests, information, options, or interruptions, to effectuate a transaction and make some commercial gains, unless specifically permitted by the user.
- **Trick Question:**
  - Deliberate use of confusing or vague language such as confusing wording, double negatives, other similar tricks, to misguide/misdirect a user from taking desired action or to take a specific response.
- **SaaS Billing:**
  - Generating and collecting payments from users on a recurring basis in a SaaS business model by exploiting positive acquisition loops in recurring subscriptions to get money as discreetly as possible.
- **Rogue Malwares:**
  - Using a ransomware/scareware to mislead users into believing there is a virus on their computer and convince them to pay for a fake malware removal tool that actually installs malware on their computer

**Key takeaways:**

These guidelines align with the Consumer Protection Act, 2019, which prioritizes safeguarding consumer rights and interests. Acknowledging the surge in digital consumers, the Department of Consumer Affairs (DoCA) recognises the need to define and address dark pattern practices for both consumer and industry’s responsiveness. Through the guidelines, the DoCA advises businesses against integrating deceptive design elements/patterns into their online interfaces, which may manipulate consumer choices, falling within dark patterns. Deploying such unfair trade practices would infringe upon consumer rights as defined in Section 2(9) of the Consumer Protection Act, 2019. Moreover, such practices would be considered as misleading advertisement, subject to penalty under Section 89 of The Consumer Protection Act, 2019 - 2 years imprisonment and INR 1 mn penalty (extended to 5 years and INR 5 mn for subsequent offence).



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