

J-24/34/2023-CPU Section – CPU [31763]
Government of India
Ministry of Consumer Affairs, Food and Public Distribution
Department of Consumer Affairs


In exercise of the powers conferred by sub-clause (1) of sub-section (2) of section 18 of the Consumer Protection Act 2019 (35 of 2019), it is proposed to issue Guidelines on Prevention and Regulation of Dark Patterns.

2. Department of Consumer Affairs (DoCA) along with the Advertising Standards Council of India (ASCI) conducted an interactive consultation with stakeholders on "Dark Patterns" on 13th June 2023. A Task Force was constituted on 28.06.2023 to submit recommendations on identification and regulation of dark patterns.

3. Based on suggestions received from the Task Force and various other industry stakeholders, draft Guidelines on Prevention and Regulation of Dark Patterns have been framed and attached herewith.

4. The Department seeks views/comments/suggestions of the public on the proposed Guidelines which may be forwarded through email. Draft Guidelines on Prevention and Regulation of Dark Patterns are attached as **Annexure-A**.

5. Views/comments/suggestions on the proposed Guidelines may be sent within 30 days (by 5th October 2023) by email to js-ca@nic.in.


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CENTRAL CONSUMER PROTECTION AUTHORITY

NOTIFICATION

F.No. J-24/34/2023-CPU (Reg).-----In exercise of the powers conferred by section 18 of the Consumer Protection Act, 2019 (35 of 2019), the Central Consumer Protection Authority hereby issues the following guidelines to provide for the prevention and regulation of dark patterns, namely:-

1. Short title and commencement. —

- a. These guidelines may be called the Guidelines for Prevention and Regulation of Dark Patterns, 2023
- b. It shall come into force on the date of its publication in the Official Gazette.

2. Definitions.- (1) In these guidelines, unless the context otherwise requires,-

- a) “Act”- means the Consumer Protection Act, 2019 (35 of 2019);
- b) “Advertiser” shall have the same meaning as defined under the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022;
- c) “CCPA” shall mean an authority established under section 10 of the Consumer Protection Act 2019;
- d) “Commercial gains” mean monetary gain or financial advantage of any kind;
- e) “Dark patterns” shall mean any practices or deceptive design patterns using UI/UX (user interface/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;

- f) “Marketplace e-commerce entity” shall have the same meaning as defined under Consumer Protection (E-Commerce) Rules, 2020;
- g) “Platform” under these guidelines shall have the same meaning as defined under Consumer Protection (E-Commerce) Rules, 2020;
- h) “Seller” shall have the same meaning as defined under Consumer Protection (E-Commerce) Rules, 2020;
- i) “Specified Dark patterns” shall mean the dark patterns as listed and defined in **Annexure 1** and any other dark pattern that CCPA may specify from time to time or otherwise;
- j) “User” shall mean any person who accesses or avails any computer resource of a platform.

(2) The words and expressions used in these guidelines but not defined, and defined in the Act, shall have the same meaning as respectively assigned to them in the Act.

3. Application. - These guidelines shall apply to:

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

4. Prohibitions against engaging in dark patterns. - No person, including any platform, shall engage in any dark pattern.

5. Conditions for dark patterns. - Any person, including any platform, shall be considered to be engaging in a dark pattern if it engages in any practice specified in Annexure 1 of the guidelines.

- 6. Guidelines not in derogation of other laws.** — Where a dark pattern is regulated under any other law for the time being in force or the rules or regulations made thereunder, the provisions contained in these guidelines shall be in addition to and not in derogation of, such regulation in other laws.
- 7. Interpretation-** In case of any ambiguity or dispute in interpretation of the guidelines the decision of the CCPA shall be final.
- 8. Contravention of guidelines-** The provisions of the Act shall apply to any contravention of these guidelines.

ANNEXURE 1

SPECIFIED DARK PATTERNS

- i. **“False Urgency”** means falsely stating or implying the sense of urgency or scarcity so as to mislead a user into making an immediate purchase or take an immediate action, which may lead to a purchase; including:
 - i. Showing false popularity of a product or service to manipulate user decision;
 - ii. Stating that quantities of a particular product or service are more limited than they actually are.

Illustrations:

- a. *Presenting false data on high demand without appropriate context. For instance, “Only 2 rooms left! 30 others are looking at this right now.”*
- b. *Falsely creating time-bound pressure to make a purchase, such as describing a sale as an ‘exclusive’ sale for a limited time only for a select group of users.*

- ii. **“Basket sneaking”** means inclusion of additional items such as products, services, payments to charity/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(s) and/or service(s) chosen by the user.

Provided that the addition of free samples or providing complimentary services or addition of necessary fees disclosed at the time of purchase, shall not be considered basket sneaking.

Explanation- The term “necessary fees” means, the fees which is necessary to fulfill the completion of the order such as delivery charges, gift wrapping, additional taxes on the product charged by the government or any other charges which are explicitly disclosed to the consumer at the time of purchase.

Illustrations:

- a. *Automatic addition of paid ancillary services with a pre-ticked box or otherwise to the cart when a consumer is purchasing a product(s) and/or service(s).*

- v. **“Subscription trap”** means the process-
- i. of making cancellation of a paid subscription impossible or a complex and lengthy process; or
 - ii. hiding the cancellation option for a subscription; or
 - iii. forcing a user to provide payment details and/or authorization for auto debits for availing a free subscription;
 - iv. making the instructions related to cancellation of subscription ambiguous, latent, confusing, cumbersome.
- vi. **“Interface interference”** means 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 desired by her.

Illustrations:

- a. *Designing a light colored option for selecting “No” in response to a pop-up asking a user if they wish to make a purchase or concealing the cancellation symbol in tiny font or changing the meaning of key symbols to mean the opposite.*
- b. *An ‘X’ icon on the top-right corner of a pop-up screen leading to opening-up of another ad rather than closing it.*
- c. *Designing a virtually less prominent designing a light colored option for selecting “No” in response to a pop-up asking a user if they wish to make a purchase.*

- vii. **“Bait and switch”** means the practice of advertising a particular outcome based on the user’s action but deceptively serving an alternate outcome.

Illustrations:

- a. *A seller offers a quality product at a cheap price but when the consumer is about to pay/buy, the seller states that the product is no longer available and instead offers a similar looking product but more expensive.*

- viii. **“Drip pricing”** means a practice whereby-
- i. elements of prices are not revealed upfront or are revealed surreptitiously within the user experience; or
 - ii. revealing the price post-confirmation of purchase, i.e. charging an amount higher than the amount disclosed at the time of checkout; or
 - iii. a product or service is advertised as free without appropriate disclosure of the fact that the continuation of use requires in-app purchase; or
 - iv. a user is prevented from availing a service which is already paid for unless something additional is purchased

Explanation-: A marketplace e-commerce entity shall not be liable for price fluctuations to the extent attributable to prices changes by third party sellers or due to other factors beyond their control.

Illustrations:

- a. *A consumer is booking a flight, the online platform showcases the price as X at the checkout page, and when payment is being made, price Y (which is more than X) has been charged by the platform to the consumer.*
- b. *A consumer has downloaded a mobile application for playing chess, which was advertised as ‘play chess for free’. However, after 7 days, the app asked for a payment to continue playing chess. The fact that the free version of the game is available only for a limited time, i.e., 7 days in this case, was not disclosed to the consumer at the time of downloading the mobile application.*
- c. *A consumer has purchased a gym membership. In order to actually use the gym, the user must purchase special shoes/boxing gloves from the gym, and the same was not displayed at the time of offering the gym membership.*

- ix. **“Disguised advertisement”** means a practice of posing, masking advertisements as other types of content such as user generated content or new articles or false advertisements.

Explanation:

- a) For the purposes of this clause, the expression “disguised advertisement” also includes misleading advertisement as provided under section 2 (1)(28) of the CP

Act 2019 and the “Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022” shall also be applicable to it.

b) In relation to content posted by a seller or an advertiser on a platform, the responsibility of making the disclosure that such content is an advertisement shall be on such seller or advertiser.

x. “**Nagging**” shall mean a dark pattern due to which users face an overload of requests, information, options, or interruptions; unrelated to the intended purchase of goods or services, which disrupts the intended transaction.

Illustrations:

a. *Websites asking a user to download their app, again and again*

b. *Platforms asking users to give their phone numbers for supposedly security purposes*

c. *Constant request to turn on notifications with no option to say “NO”.*