

ASCI's discussion paper reveals dark patterns used by digital platforms that cause consumer harm

~With rapid advancements in user interfaces, dark patterns are the latest threat to consumer protection~

Mumbai, November 10, 2022: An extensive discussion paper released by the Advertising Standards Council of India (ASCI), the self-regulatory body of the advertising industry, has highlighted how UI/UX deployed by digital platforms could manipulate consumer choices and consumption patterns.

According to the paper, these manipulative tactics, or “dark patterns” come in many forms and are present across multiple platforms. Practices like drip pricing, trick questions, nagging, disguised ads, bait and switch, among others, are just some of the commonly found dark patterns on the internet. With online commerce growing rapidly, consumers' vulnerability to such practices is increasing. In FY 2021-22, 29% of the advertisements processed by ASCI were disguised by influencers as regular content, which is also a part of dark patterns in advertising. Categories found to be major violators were cryptocurrency, personal care, fashion and e-commerce.

Taking note of the growing global concerns around such practices, ASCI formed a 12-member task force comprising stakeholders from different tech platforms, legal experts, civil society and domain experts. The task force examined key issues related to dark patterns to understand which of these practices potentially violate the ASCI code which inter-alia states: “Advertisements shall not be framed so as to abuse the trust of consumers or exploit their lack of experience or knowledge.”

Not all dark patterns fall under the domain of advertising and hence may be out of ASCI's remit, however, they could amount to unfair trade practices which compromise consumer interest. ASCI hopes that in the near future, such dark patterns will be addressed by the regulators as they see appropriate in the interest of consumer protection.

ASCI has outlined 4 key practices that it intends to address through expanding its code: namely Drip pricing, Bait and Switch, False Urgency and Disguised advertising. ASCI has invited comments from all stakeholders and the members of the public on this proposed expansion of the ASCI code. Please send your comments to contact@ascionline.in; the last date to receive these comments is 31st December 2022.

Manisha Kapoor, CEO and Secretary General, ASCI, said: “There is a thin line between dark patterns and legitimate targeting and persuasion tactics. Dark patterns cause consumer harm and with the ever-increasing presence of advertising on digital platforms, these are now under sharp scrutiny of ad-regulators around the world. Eventually dark patterns ruin consumer experience and increase abandonments, and make the consumer suspicious of the online space. By choosing fair practices that enhance both consumer and shareholder value, brands can develop sustainable ways of consumer engagement. ASCI continues its investment in

technology to track and monitor digital advertising to help keep the online experience safe for consumers.”

The paper cites examples provided by UX experts of alternative practices that are fair to consumers and that can be adopted by brands. These alternatives can clean up the online space of malicious patterns and build consumer confidence in the digital world.

READ THE DOCUMENT HERE: <https://ascionline.in/images/pdf/dark-patterns.pdf>

About The Advertising Standards Council of India (ASCI)

The Advertising Standards Council of India (ASCI), established in 1985, is committed to the cause of self-regulation in advertising, ensuring the protection of consumer interests. ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation, which requires advertisements to be legal, decent, honest, and truthful and not hazardous or harmful while observing fairness in competition. ASCI looks into complaints across ALL MEDIA such as Print, TV, Radio, hoardings, SMS, Emailers, Internet / website, product packaging, brochures, promotional material and point of sale material etc. In January 2017, the Supreme Court of India in its judgement affirmed and recognised the self-regulatory mechanism as an effective pre-emptive step to statutory provisions in the sphere of advertising content regulation for television and radio in India. ASCI’s role has been acclaimed by various Government bodies including The Department of Consumer Affairs (DoCA), Food Safety and Standards Authority of India (FSSAI), Ministry of AYUSH as well as the Ministry of Information and Broadcasting (MIB). MIB issued an advisory for a scroller providing ASCI’s WhatsApp for Business number 77100 12345, to be carried by all TV broadcasters for consumers to register their grievance against objectionable advertisements. On the international front, in 2021, ASCI CEO and Secretary General, Ms. Manisha Kapoor, was elected as one of the four Vice-President’s on the Executive Committee of the International Council on Ad Self-Regulation (ICAS). Among several awards bestowed by the European Advertising Standards Alliance (EASA), ASCI bagged a Gold Global Best Practice Award for the Mobile App “ASCIonline” (2016), a special recognition for its “Guidelines for Celebrities in Advertising” at the first-ever ‘Global Awards for Effective Advertising Self-Regulation’ hosted by the ICAS (2019). In 2021, ASCI also won two ICAS awards, one for the ASCI scroll telecast across television in the ‘Best Awareness Raising Initiative’ and for its extensive digital suo-moto monitoring through the NAMS initiative, in the ‘Special Category’. It also got a special mention in the ‘Best Sectoral Initiative’ category for its efforts and regulatory recognition of its Gaming Guidelines.

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