

GUIDELINES FOR ONLINE DECEPTIVE DESIGN PATTERNS IN ADVERTISING

15th June 2023

PREAMBLE

Online Deceptive Design Patterns commonly known as “Dark Patterns” is an umbrella term referring to a wide variety of practices commonly found in online user interfaces that lead consumers to make choices that often are not in their best interests. Developing a universally accepted definition of Dark Patterns is a challenge, owing in part to the wide variety of practices referred to as such and different views on whether certain practices should be considered Dark Patterns.

The OECD Committee on Consumer Policy proposes the following working definition intended to facilitate near-term discussion about such practices among regulators and policymakers across jurisdictions: *“Dark commercial patterns are business practices employing elements of digital choice architecture, in particular in online user interfaces, that subvert or impair consumer autonomy, decision-making or choice. They often deceive, coerce or manipulate consumers and are likely to cause direct or indirect consumer detriment in various ways, though it may be difficult or impossible to measure such detriment in many instances.”*

Dark Patterns share one or more end-goals – for example getting consumers to purchase, purchase more of, or continue to purchase, a good or service that they would otherwise not purchase or purchase in lesser quantity; to spend more money on a purchase or time on a service than desired; or to give up more personal data than desired – with the ultimate purpose of increasing business revenue. There are many instances of Dark Pattern executions which are unrelated to advertisements such as users being guilted into opting for something which they would otherwise not have, or, when consumers purchase something, additional products are added into the basket of the consumer, without their knowledge - like donations to relief funds, etc. However as ASCI's remit is limited to self-regulation of Advertising content these guidelines cover only advertising in digital media including e-commerce, airline, food delivery etc. apps and websites.

Chapter 1 of the ACSI code requires ads to be honest, and not abuse the trust or lack of expertise of the consumer. The code requires ads to not mislead by omission, exaggeration, implication or ambiguity. To ensure that advertisements do not breach Chapter 1, the following guidelines are to be applied to digital advertising.

GUIDELINES

1. Drip Pricing:

Quoted prices in advertisements and e-commerce sites must include non-optional taxes, duties, fees and charges that apply to all or most buyers so as to prevent drip pricing. Drip pricing refers to a practice whereby

elements of the prices are not revealed upfront, and the total price is only revealed at the very end of the buying process or post-confirmation of purchase. This creates ambiguity around the final price as well as prevents easy price comparisons. Hence incomplete price representations upfront would be considered misleading.

Example: A consumer orders a snack from an online food delivery platform where a price of Rs. 100 is shown, but the final amount payable comes to Rs. 175 as it additionally includes taxes, delivery fees, platform convenience fees and other such charges. If such charges are common for all or most consumers, they must be included in the displayed prices on the listing ad itself.

2. Bait and Switch:

When an ad or an element in the ad directly or indirectly implies one outcome based on the consumer's action, but instead serves an alternative outcome, the same would be considered misleading. Examples:

- a) A consumer may select a product offered at a certain price but is thereafter only able to access the same product at a higher price.
- b) Another example is offering an attractive product and later revealing that it is out of stock, offering an alternative product.
- c) Changing the meaning of key symbols to mean the opposite. For example, an X on the top right corner of the ad, instead of closing an app, may open up the app, or do the very action that the user was trying to avoid. The X on the top right is commonly understood by consumers to mean "close". But in this specific interaction, the X means "accept/ proceed". This would be deemed to mislead the consumer.

3. False Urgency:

Stating or implying that quantities of a particular product or service are (e.g. airline seats available at a certain price) more limited than they actually are would amount to misleading consumers. In the case of any complaint, the advertisers would be required to demonstrate that the stock position at the time of the appearance of the limited quantity message was of a level where the urgency communicated could not be considered misleading.

4. Disguised Ads:

An advertisement that is of a similar format as editorial or organic content must clearly disclose that it is an ad. Examples could be influencer posts, paid reviews, and ads placed in a manner to appear like editorial content.

These guidelines will be applicable from 1st September 2023.