

CENTRAL CONSUMER PROTECTION AUTHORITY

NOTIFICATION

New Delhi, the 30th November, 2023

F. No. CCPA-1/1/2023-CCPA -(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. —(1) These guidelines may be called the Guidelines for Prevention and Regulation of Dark Patterns, 2023
 - (2) 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) “Central Consumer Protection Authority” shall mean the authority established under section 10 of the Consumer Protection Act 2019 (35 of 2019);
 - (d) “commercial gains” mean monetary gain or financial advantage of any kind;
 - (e) “dark patterns” shall mean any practices or deceptive design pattern using user interface or user experience 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;

- (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” mean the dark patterns as listed and defined in **Annexure 1** and shall include any other dark pattern that Central Consumer Protection Authority 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 practice.

5. Conditions for dark patterns. - Any person, including any platform, shall be considered to be engaging in a dark pattern practice 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 practice 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 other laws.

7. Interpretation- In case of any ambiguity or dispute in interpretation of the guidelines, the decision of the Central Consumer Protection Authority shall be final.

NIDHI KHARE, Chief Commissioner

[ADVT.-III/4/Exty./569/2023-24]

ANNEXURE 1

SPECIFIED DARK PATTERNS

The dark pattern practices and illustrations specified below provide only guidance and shall not be construed as an interpretation of law or as a binding opinion or decision as different facts or conditions may entail different interpretations:

(1) “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 taking 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.*

(2) “Basket sneaking” means 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:

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 as 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 or service;*

(b) *a user purchases a single salon service, but while checking out, a subscription to the salon service is automatically added;*

(c) *automatically adding travel insurance while a user purchases a flight ticket.*

(3) “Confirm shaming” means using a phrase, video, audio or any other means to create a sense of fear or shame or ridicule or guilt in the mind of the user so as to nudge the user 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 for the purpose of making commercial gains by subverting consumer choice.

Illustrations:

(a) *a platform for booking flight tickets using the phrase “I will stay unsecured”, when a user does not include insurance in their cart;*

(b) *a platform that adds a charity in the basket without user’s consent and uses a phrase such as “charity is for rich, I don’t care” when a user prefers to opt out of contributing towards charity.*

(4) “**Forced action**” mean 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 in order to buy or subscribe to the product or service originally intended by the user.

Illustrations:

(a) *prohibiting a user from continuing with the use of product or service for the consideration originally paid and contracted for, unless they upgrade for a higher rate or fees;*

(b) *forcing a user to subscribe to a newsletter in order to purchase a product;*

(c) *forcing a user to download an unintended or unrelated separate app to access a service originally advertised on another app e.g. A user downloads app, X, meant for listing houses for renting. Once the user downloads X, they are forced to download another app, Y, for hiring a painter. Without downloading Y, the user is unable to access any services on X;*

(d) *forcing a user to share personal information linked with Aadhar or credit card, even when such details are not necessary for making the intended purchase;*

(e) *forcing a user to share details of his contacts or social networks in order to access products or services purchased or intended to be purchased by the user;*

(f) *Making it difficult for consumers to understand and alter their privacy settings, thereby encouraging them to give more personal information than they mean to while making the intended purchase.*

(5) “Subscription trap” means the process of-

(i) 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 or authorization for auto debits for availing a free subscription; or

(iv) making the instructions related to cancellation of subscription ambiguous, latent, confusing, cumbersome.

(6) “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 as desired.

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) A ‘X’ icon on the top-right corner of a pop-up screen leading to opening-up of another advertisement 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.

(7) “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 or buy, the seller states that the product is no longer available and instead offers a similar looking product but more expensive;

(b) a product is unavailable but is falsely shown as available to lure the consumer to move it to the shopping cart. Once the consumer moves it to the shopping cart, it is revealed that the product is ‘out of stock’ and instead, a higher-priced product is now available.

(8) “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 price 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.

(9) “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, which are designed to blend in with the rest of an interface in order to trick customers into clicking on them.

Explanation-

(a) for the purposes of this paragraph, the expression “disguised advertisement” shall also include misleading advertisement as defined in clause 2(28) of the Act 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.

(10) “Nagging” means a dark pattern 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.

Illustrations:

(a) websites asking a user to download their app, again and again;

(b) platforms asking users to give their phone numbers or other personal details for supposedly security purposes;

(c) constant request to turn on or accept notifications or cookies with no option to say “NO”.

(11) “Trick Question” means the deliberate use of confusing or vague language like confusing wording, double negatives, or other similar tricks, in order to misguide or misdirect a user from taking desired action or leading consumer to take a specific response or action

Illustrations:

(a) while giving a choice to opt, “**Do you wish to opt out of receiving updates on our collection and discounts forever?**” using phrases like, “Yes. I would like to receive updates” and “Not Now”, instead of the option, “Yes”.

(12) “Saas billing” refers to the process of generating and collecting payments from consumers on a recurring basis in a software as a service (SaaS) business model by exploiting positive acquisition loops in recurring subscriptions to get money from users as surreptitiously as possible.

Illustrations:

(a) no notification is given to the user when free trial is converted to paid;

(b) silent recurring transactions whereby the user’s account is debited without being notified or simply stated auto-renewing monthly subscriptions without telling users;

(c) charging customers for features and services they don’t use;

(d) using shady credit card authorization practices to deceive consumers.

(13) “Rogue Malwares” means using a ransomware or scareware to mislead or trick user into believing there is a virus on their computer and aims to convince them to pay for a fake malware removal tool that actually installs malware on their computer.

Illustrations:

(a) when a pirating website/app promises the consumer to provide free content (audio or audio-visual or others) but actually leads to an imbedded malware when the link is accessed;

(b) when consumers gain access to the content on pirated platforms but keep getting pop-ups that have advertisements on them which are imbedded with malware;

(c) when consumers are prompted to click on an advertisement or are automatically redirected to an advertisement, but instead find their personal files locked up, followed by a demand to make a payment to regain access.