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OVERVIEW OF 'DARK PATTERNS' GUIDELINES

A. Introduction

On November 30, 2023, the Central Consumer Protection Authority (“CCPA”) issued the Guidelines for Prevention and Regulation of Dark Patterns, 2023 (“**Guidelines**”)¹ under Section 18² of the Consumer Protection Act 2019 (“**Act**”).

B. Guidelines

1. The Guidelines prohibit all digital selling platforms, systematically offering goods or services in India, advertisers, or sellers, from engaging in ‘dark pattern’ practices.³
2. Dark pattern is defined as, “*any practices (sic) 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.*”⁴
3. The Guidelines provide an indicative list of activities that amount to engaging in dark pattern practices. These include:⁵
 - i. False Urgency- Creating a false sense of urgency or scarcity so as to prompt immediate purchases or actions. This can involve falsely showcasing popularity or exaggerating limited quantities of a product or service.
 - ii. Basket Sneaking- Adding extra items, such as products, services, or charitable donations, to a users’ checkout without their consent. This results in the total amount payable by the user being higher than what they intended to pay for the chosen product or service. However, this does not include the addition of disclosed necessary fees, such as delivery charges or taxes, required to complete the order.
 - iii. Confirm Shaming- Employing various methods such as phrases, videos, or audio to instil fear, shame, ridicule, or guilt in users’ minds. The aim is to influence users to take certain actions, such as purchasing a product/service or continuing a subscription by manipulating consumer choice, mainly for commercial gains.
 - iv. Forced Action- Compelling the users to take an action that necessitates the purchase of additional goods, subscription to unrelated services, or sharing personal information in order to buy or subscribe to the originally intended product or service.
 - v. Subscription Trap- Includes:
 - a. making it difficult or impossible to cancel a paid subscription;
 - b. hiding the cancellation option for a subscription;
 - c. requiring users to provide payment details or authorize auto-debits for a supposedly free subscription; or

¹ A copy of the Guidelines is available [here](#).

² Section 18 of the Act- Powers and Functions of Central Authority.

³ Point 3 and 4 of the Guidelines.

⁴ Point 2(e) of the Guidelines.

⁵ Annexure 1 of the Guidelines.

- d. providing ambiguous, hidden, confusing, or cumbersome instructions related to cancelling a subscription.
 - vi. Interface Interference- A design element that manipulates the user interface by emphasizing particular information while concealing or obscuring other pertinent information in relation to the emphasized data. This manipulation is aimed at redirecting the user from taking the desired action.
 - vii. Bait and Switch- Advertising a particular outcome based on the user's action but deceptively serving an alternate outcome.
 - viii. Drip Pricing- Includes:
 - a. hiding certain price elements upfront or revealing them discreetly during the user experience;
 - b. disclosing the price after the purchase confirmation, charging an amount higher than originally stated at checkout;
 - c. advertising a product or service as free without adequately disclosing that continued use requires in-app purchases; or
 - d. preventing a user from accessing a service for which they have already paid unless they make additional purchases.
 - ix. Disguised Advertisement- Presenting advertisement in a manner that disguises them as other types of content, such as user-generated content, news articles, or false advertisement. These advertisements are intentionally designed to blend in with the rest of the interface to deceive customers into clicking on them.
 - x. Nagging- Where a user is continuously disrupted and irritated by repetitive and persistent interactions. These interactions may come in the form of requests, information prompts, options, or interruptions, all aimed at pushing the user towards making a transaction or generating commercial gains, unless the user explicitly permits such behaviours.
 - xi. Trick Question- Intentional use of confusing or ambiguous language, such as convoluted wording, double negatives, or other deceptive techniques. The aim is to mislead or misdirect a user from taking the desired action or to steer consumers toward a specific response or action.
 - xii. SaaS Billing- Process of generating and collecting payments from consumers on a recurring basis within a Software as a Service (SaaS) business model. This is often achieved by leveraging positive acquisition loops in recurring subscriptions, aiming to obtain money from users as discreetly as possible.
 - xiii. Rogue Malware- Malicious use of ransomware or scareware to deceive users into believing that a user's computer is infected with a virus. The goal is to convince them to purchase a fake malware removal tool, which, instead of resolving the issue, installs additional malware on the computer.
4. The Guidelines are supplementary and do not diminish the applicability or authority of existing laws and in cases of any ambiguity or dispute in interpreting the Guidelines, the final decision rests with the CCPA.⁶

C. Conclusion

The CCPA has issued the Guidelines to prevent and regulate dark patterns by listing thirteen specific patterns. Dark patterns are global issues and various countries have introduced laws to prohibit them. It will be advisable for Indian online selling platforms (or apps) to ensure that their offerings are in compliance with the Guidelines, so as to avoid adverse regulatory actions on account of any of their offerings falling within the listed category of dark patterns.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com. Past issues of *Counselence Connect* are available at the 'Newsletters' page of our website (www.counselence.com).

⁶ Points 6 and 7 of the Guidelines.
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