

# THE REGULATION OF DARK PATTERNS: **NOW BANNED**



In today's digital age, e-commerce has become pervasive. Consumers purchase more products and services online than ever before. This highlights the importance of regulating practices that result in consumers unwittingly succumbing to hidden designs of profit-driven platforms and sellers.

Consequently, on November 30, 2023, , the Central Consumer Protection Authority (CCPA), India's Department of Consumer Affairs, notified the ***Guidelines for Prevention and Regulation of Dark Patterns, 2023***<sup>1</sup>. The Guidelines will henceforth apply to all platforms systematically offering goods or services in India, advertisers, and sellers, prohibiting them from engaging in 'dark patterns'.

## So, what does dark pattern mean?

Under the Guidelines of 2023, it is defined as “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”.

While the meaning is quite generic, the Guidelines also list specific behaviour identified as dark pattern behaviour to provide clarity to all stakeholders.

## Let's look at some of the real-life examples of each of these dark patterns:

- 1. False urgency:** “Only 2 rooms left! 30 others are looking at this right now”
- 2. Basket sneaking:** Automatically adding travel insurance when a user purchases a flight ticket
- 3. Confirm shaming:** Adding a charity in the basket without the user's consent and flashing ‘charity is for the rich, I don't care’ when a user opts out of contributing towards a charity
- 4. Forced action:** Forcing a user to share personal information linked with their Aadhar or credit card, even when not required for making the purchase

5. **Subscription trap:** Unnecessarily complicating or making the cancellation of a paid subscription impossible
6. **Interface interference:** Placing an 'X' icon on the top-right corner of a pop-up screen leading to the opening-up of another advertisement rather than closing it
7. **Bait and switch:** Here, an unavailable product is falsely shown as available to lure the consumer to move it to the shopping cart; once the user does so, it is revealed that the product is 'out of stock' and instead, a higher-priced product is now available
8. **Drip pricing:** When real prices are not being revealed upfront or revealed surreptitiously within the user experience<sup>2</sup>
9. **Disguised advertisement:** The practice of posing and masking advertisements as other types of content such as user-generated content or new articles, or false advertisements, which are designed to blend with the rest of an interface to trick customers into clicking on them<sup>3</sup>
10. **Nagging:** Platforms asking users to give their phone numbers or other personal details supposedly for security purposes
11. **Trick question:** While giving a supposed choice to opt out, using phrases like, 'Yes, I would like to receive updates' or 'Not Now', instead of the straightforward option, 'Yes'
12. **SaaS billing:** No notification is given to the user when a free trial is converted to paid usage
13. **Rogue malwares:** When consumers gain access to the content on pirated platforms but keep getting pop-ups that have advertisements on them that are embedded in the malware



The above-listed prohibited acts are commonplace scenarios that consumers face daily. The Guidelines propose to broaden the scope of regulating dark patterns to cover consumer concerns more comprehensively. Regulating such activities is required as many consumers may not even be aware that they are being drawn into making purchases and the Guidelines should act as a deterrent to engage in such anti-consumer practices.

<sup>1</sup> **Note:** <https://consumeraffairs.nic.in/theconsumerprotection/guidelines-prevention-and-regulation-dark-patterns-2023>

<sup>2</sup> **Note:** 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.

<sup>3</sup> **Note:** 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.