# Assessment of dark patterns and adherence to the Department of Consumer Affairs' Guidelines for Prevention of Dark Patterns, 2023

As per guidelines, 'dark patterns' shall mean any practices or deceptive design patterns made using user interface (UI) or user experience (UX) interactions on any platform that is designed to mislead or trick users into doing something they originally did not intend/want to do by subverting or impairing the consumer autonomy, decision making, or choice, amounting to a misleading advertisement or unfair trade practice or violation of consumer rights.

Central Consumer Protection Authority issued the following guidelines on thirteen parameters to ensure the prevention and regulation of dark patterns:

| Dark patterns | Meaning or inference |
| --- | --- |
| **False urgency** | This means falsely stating or implying a sense of urgency or scarcity to mislead the user into making an immediate purchase or taking an immediate action, which may lead to a purchase, including:<br>• Showing false popularity of a product or service to manipulate user decision<br>• Stating that quantities of a particular product or service are more limited than they actually are |
| **Basket sneaking** | It implies the inclusion of additional items such as products, services, and payments to charity or donations 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 them. The addition of free samples, providing complimentary services, or the addition of necessary fees disclosed at the time of purchase shall not be considered basket sneaking. |
| **Confirm shaming** | This means using a phrase, video, audio, or any other means to create a sense of fear, shame, ridicule, or guilt in the mind of the user to convince them to purchase a product or service from the platform or continue a subscription or a service, primarily for the purpose of making commercial gains by subverting consumer choice. |
| **Forced action** | This means forcing the user into taking an action that would require them to buy any additional goods, 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. |
| **Subscription trap** | This means the process of:<br>• Making cancellation of a paid subscription impossible or a complex and lengthy process<br>• Hiding the cancellation option for a subscription<br>• Forcing the user to provide payment details or authorisation for auto debits for availing a free subscription<br>• Making the instructions related to the cancellation of a subscription ambiguous, latent, confusing, and cumbersome |
| **Bait and switch** | This refers to the practice of advertising a particular outcome based on the user's action but deceptively serving an alternate outcome. |

| Dark patterns | Meaning or inference |
| --- | --- |
| **Drip pricing** | This refers to a practice whereby:<br>• Elements of prices are not revealed upfront or are revealed surreptitiously within the UX<br>• Revealing the price post-confirmation of purchase, i.e., charging an amount higher than the amount disclosed at the time of checkout, or a product or service is advertised as free without appropriate disclosure of the fact that the continuation of its use requires an in-app purchase<br>• The user is prevented from availing a service which is already paid for unless something additional is purchased |
| **Disguised advertisement** | This refers to the practice of posting masking advertisements as other types of content, such as user-generated content, new articles, or false advertisements, which are designed to blend in with the rest of an interface to trick customers into clicking on them. |
| **Nagging** | Nagging is a dark pattern practice in which the user receives 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. |
| **Trick question** | It refers to the deliberate use of perplexing or vague language, like confusing wording, double negatives, or other similar tricks, in order to misguide or misdirect the user from taking a desired action or leading the consumer to take a specific response or action. |
| **SaaS billing** | It is 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. |
| **Rogue malware** | It refers to the practice of using ransomware or scareware to mislead or trick the user into believing that there is a virus on their computer and aims to convince them to pay for a fake malware removal tool that installs malware on their computer. |

# Key advantages of adopting and implementing the Guidelines for Prevention and Regulation of Dark Patterns, 2023

**Enhanced reputation and trust**
• Trustworthiness: Operating ethically and transparently builds trust with users and stakeholders.
• Positive brand image: Demonstrating a commitment to fair practices can enhance brand reputation.

**Improved user relationships**
• Positive UX: Ethical design fosters a better UX, leading to increased user satisfaction and loyalty.
• Increased user retention: By avoiding deceptive practices, companies retain users who appreciate honest and clear interactions.

**Reduced legal risks and penalties**
• Compliance: Avoiding dark patterns helps avoid legal liabilities, fines, or penalties associated with deceptive practices.
• Mitigated lawsuits: Compliance reduces the risk of lawsuits from users or regulatory bodies.

**Long-term sustainability**
• Stability and longevity: Ethical practices contribute to the company's long-term viability by fostering sustainable relationships with users and stakeholders.
• Reduced churn: Satisfied customers are more likely to remain loyal, reducing churn rates.

**Competitive advantage**
• Differentiation: Ethical behaviour can set a company apart in the market, attracting users looking for trustworthy and transparent services.
• Positive marketing impact: Highlighting ethical practices can be a compelling marketing point, attracting ethically conscious consumers.

**Innovation and long-term growth**
• Innovation opportunities: Ethical design encourages creative problem-solving and innovation in UX, leading to long-term growth.
• Attracting talent: An ethical reputation can attract top talent that values a company's commitment to integrity.

**Regulatory adaptability**
• Preparedness for future regulations: Companies complying with existing regulations are better equipped to adapt to future regulatory changes in a proactive manner.

# Key digital native platforms need a comprehensive re-assessment

| 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|
| Retail/e-commerce apps | Online gaming platforms | Fintech and banking apps | Market place websites and applications | Traveltech/edtech/insuretech platforms |

## Grant Thornton Bharat's solution offerings

Grant Thornton Bharat offers a comprehensive set of services and solutions that can help customers and entities identify and analyse dark patterns. Our in-house team of experts evaluates dark pattern compliance as per the guidelines.

## Dark pattern assessment and detection methodology

**01** Examine the application or the platform

**02** Examine the policies and internal documentation

**03** Recommendation report with specific suggestions for improvement(s) and actions

## STEP 1: Examine the application or the platform with the following checks:

| Dark pattern detection criteria | Essential checks |
|---|---|
| Familiarise with dark pattern types as per the guidelines | Asses various types of dark patterns such as misleading information, hidden costs, forced action, etc |
| Examine UI/interaction design | Analyse interfaces for elements that might confuse or deceive users |
| Evaluate UX flow | Follow user journeys to identify points of friction or deception |
| Assess language and content | Scrutinise wording and information provided to users for ambiguity or misleading aspects |
| Consider visual cues and layout | Evaluate design choices (colour, size, placement) that may trick or mislead users |
| Review consent and privacy settings | Check how data consent is obtained and if privacy settings are clear |
| Engage with user feedback | Gather user reviews to identify recurring issues related to confusing design elements |
| Compare with industry standards | Compare design choices with established UX/UI best practices |
| Consult with experts or peers | Seek input from professionals specialising in UX, ethics, or legal aspects |
| Document findings and patterns | Create a detailed report outlining identified dark patterns with evidence and examples |
| Recommend solutions or mitigations | Propose alternative designs or solutions to rectify dark patterns |
| Monitor changes and reassess | Periodically revisit to check for improvements or the emergence of new dark patterns |

## STEP 2: Examine the policies and internal documentation with the following checks:

### Proposed step

**Comprehensive review of five aspects:**
- Customer-facing application functionality and each of the workflows, notifications (in-app, emails, and SMS)
- Targeting through advertisement channels on the basis of cache, cookies, history, or any other customer's details captured on the app and platform (including clicks)
- Customer servicing policies for each service/functionality delivered to the customers
- Internal customer communication policies and standard operating procedures for employees and third-party towards servicing customers, especially towards 'targeted marketing' through multiple channels to customers
  - Customer service, with specific evidence
  - Recommend actionable items for compliance
- Sales process, customer targeting, and marketing approach document

### Methodology and timelines

- Study of policy
- Interaction with customer support team(s)
- Interaction with marketing and sales teams
- Interaction with the product team
- Interaction with digital marketing teams through multiple channels

## STEP 3: Recommendation report with specific suggestions for improvement(s) and actions in the following aspects, along with evidence:

- Specific changes in apps, platforms, websites, and notification engine
- Customer communication and digital marketing and advertisement approach
- Policy and internal communication-related changes
- Overall strategy shift in customer marketing

## Our experts – Assessment of dark patterns on digital platforms

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