



news flash
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Guidelines for Online Deceptive Design Patterns in Advertising

Introduction

The Advertising Standards Council of India (“ASCI”) has released “*Guidelines for Online Deceptive Design Patterns in Advertising*” (“**Guidelines**”) to curb misleading and manipulative patterns in online advertising which will be applicable from 1st September 2023.

Online Deceptive Design Patterns or Dark Patterns include a wide variety of practices which are commonly found in online user interfaces and cause consumers to make choices detrimental to their interests. The ASCI’s crackdown on dark patterns began nearly a decade after the term was first coined with the release of a comprehensive discussion document, which was opened for comments from the public. The discussion document talks about not only dark patterns related to but also unrelated to advertising and provides suggestions for UX designers and brands as alternatives to dark patterns.

After allowing the public to comment on the discussion document, a multi-stakeholder discussion on the comments was set up as a collaborative effort between the Secretary of the Department of Consumer Affairs (“**DoCA**”) and the ASCI. This multi-stakeholder discussion led to the development of the Guidelines dated 15th June 2023 which were released by the ASCI.

Some of the key features of the guidelines are set out below:

1. Definition

According to the preamble to the Guidelines, the proposed working definition of dark patterns is “*business practices employing elements of digital choice architecture, particularly 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.*” The proposed definition implies the use of digital media and advertising to induce customers to make purchase decisions which they would otherwise not make and coerce or manipulate them to make such decisions. The intention behind this proposed definition is to facilitate discussion since adopting a globally accepted definition is a challenge due to the wide variety of practices that can come under the purview of dark patterns.

2. Limited Applicability

The Guidelines have been made applicable to digital advertising in order to ensure the advertisements published in digital media are in compliance with the Code for Self-Regulation of Advertising Content in India (“**ASCI Code**”). The Code requires ads to be honest, not abuse the trust or lack of expertise of the consumer and not mislead by omission, exaggeration, implication or ambiguity.

3. Dark Patterns

The discussion document released by the ASCI talked about over ten different kinds of dark patterns. These dark patterns were not only related but also unrelated to advertisements. In contrast, the Guidelines aim to control four different dark patterns which include:

a) Drip Pricing

When an advertisement conceals the elements of the price and reveals the total price only at the end of the buying process or after confirmation of purchase it will be considered misleading. The Guidelines require quoted prices in the advertisement and e-commerce website to include non-optional taxes, duties, fees, and charges that are common for all or most of the consumers.

b) Bait and Switch

When an advertisement or an element in the advertisement directly or indirectly indicates one outcome based on the consumer’s action but serves another outcome after the consumer opts for it, the advertisement is misleading.

c) False Urgency

When an advertisement falsely states or implies that quantities of a particular product or service are more limited than they are, the Guidelines provide that such an advertisement is misleading. Further, in case of any such complaint, the advertisers would be required to demonstrate that the stock position at the time of the advertisement was limited as stated or implied in the advertisement.

d) Disguised Ads

When an advertisement is in a similar format as editorial or organic content, the guidelines provide that such an advertisement must clearly disclose that it is an advertisement.

Conclusion

The Guidelines are a much-needed step to regulate the growing online space in India. The discussion document acknowledges that misleading and manipulative patterns in online advertising undermine consumer confidence and lower brand image and loyalty. The guidelines have been formulated after much consultation and discussion, but their impact maybe hindered by the absence of any compliance mechanism to oversee its implementation.

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