Canadian Journal of Marketing Research
ISSN: 0829-4836
https://canadian-jmr.com/index.php/cjmr

Research Article

Regulating the Deceptive Interface: Consumer Protection Law and the Challenge of Dark-Pattern Advertising in India

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Article History
Received: 27.04.2026
Accepted: 11.07.2026
Published: 08.08.2026

Abstract: As the ecommerce and digital advertising industry has surged in India, we are seeing the emergence of so-called “dark patterns” those interface and messaging decisions that push customers towards decisions they may not otherwise be inclined to make. This paper aims to provide a doctrinal understanding of the legal journey in India from the general ambit of "unfair trade practice" as provided by the Consumer Protection Act, 2019, to the specialized Guidelines for Prevention and Regulation of Dark Patterns, 2023 released by the Central Consumer Protection Authority (CCPA). It links the dark patterns classified in the Guidelines (false urgency, basket sneaking, confirm-shaming, forcing consumer action and subscription traps) to existing statutory taxonomies for unfair and misleading trade practices and considers the interpretation challenges found when the existing pre-digital consumer protection doctrine is applied to algorithmic persuasion. The paper claims that while the 2023 Guidelines are a pivotal step forward in regulation, a private right of action is still absent from the equation as well as definitional ambiguities and jurisdictional limitations exist to restrict enforcement. Concludes with a compliance-by-design framework that guides marketing practitioners and a set of doctrinal clarifications for regulators and researchers.

Keywords: Dark Patterns, Consumer Protection, Consumer Protection Act 2019, Central Consumer Protection Authority, Unfair Trade Practice, Digital Marketing Law, Misleading Advertisement

INTRODUCTION

The term "dark pattern" was coined in 2010 to describe user-interface choices engineered to benefit a business at the expense of the user's autonomy or economic interest. What began as a design-ethics critique has, over the past five years, become a matter of black-letter consumer law. In India, the shift from moral censure to legal regulation was formalized on 30 November 2023, when the CCPA notified the Guidelines for Prevention and Regulation of Dark Patterns, 2023 under the Consumer Protection Act, 2019 (CPA 2019). These Guidelines sit within a broader regulatory architecture that includes the CCPA's 2022 Guidelines for Prevention of Misleading Advertisements and the pre-existing statutory categories of "unfair trade practice" and "misleading advertisement" under the CPA 2019 itself.

This paper undertakes three tasks. First, it sets out the legal framework within which dark-pattern regulation now operates, situating the 2023 Guidelines within the pre-existing statutory scheme. Second, it maps common marketing and interface-design practices onto the categories recognized by the CCPA and identifies the doctrinal strain that arises when a legal framework built around discrete factual misrepresentation is asked to police cumulative, behaviorally engineered persuasion. Third, it flags enforcement gaps (definitional, jurisdictional and remedial) and introduces a compliance-by-design framework that can be used by marketing teams and legal counsel together in the product-design phase instead of having lawyers use the framework during the post-launch review phase. The analysis is of a doctrinal and comparative nature is based on statutory text, CCPA guidance and the consumer-protection jurisprudence.

The Legal Framework: From the CPA 2019 to the 2023 Dark Pattern Guidelines

Consumer Protection Act, 2019 supersedes the earlier Act of 1986 to provide a better-consumer milieu for networked commerce. Under Section 2 (28), "unfair trade practice" includes any practice which employs a deceptive means for promoting goods or services and Section 2 (47) defines "misleading advertisement" as an advertisement which contains a description of the product or a statement with respect thereto which is likely to mislead the public, or which gives the impression of a guarantee or a warranty as to the nature, substance or quality which is not genuine or is contra to the provisions of this Act in any manner, expresses or implies. The Act created the CCPA as a dedicated regulator under Section 10, with powers under Sections 18 to 21 to investigate, order recall or discontinuation of unfair practices and imposes penalties for misleading advertisements; including, in serious or repeated cases, action against endorsers.

Two rounds of subordinate guidance operationalize these provisions for the digital environment. The CCPA's 2022 Guidelines for Prevention of Misleading Advertisements and Endorsements set out criteria for identifying misleading claims and bona fide endorsements and required advertisers to possess a reasonable basis for objective claims before publication. The 2023 Guidelines for Prevention and Regulation of Dark Patterns went further, identifying a named taxonomy of practices; among them false urgency, basket sneaking, confirm-shaming, forced action, subscription traps, interface interference, bait-and-switch tactics, drip pricing, disguised advertisements and nagging; and declaring that any person engaging in these practices shall be considered to be engaging in an unfair trade practice or a misleading advertisement, as applicable, under the CPA 2019. Readers relying on the precise wording or the complete list of recognized patterns should verify the current text of the Guidelines directly, as CCPA guidance in this area continues to be refined.

Critically, the 2023 Guidelines do not create a freestanding cause of action; they operate as an interpretive gloss that channels specified digital practices into the pre-existing statutory categories of unfair trade practice and misleading advertisement. This design decision also has doctrinal implications which are discussed in Section 4 below. There is another regulatory dimension in the form of Advertising Standards Council of India (ASCI)'s self-regulatory Code, where ASCI has issued guidelines that specifically speak on dark patterns in advertising; which are separate and concurrent to the CCPA's statutory regulatory mechanism.

Marketing Practice and Legal Categorization

For this purpose, the known dark patterns can be compared with the CPA 2019's categories and this has a workable, but imperfect match. A countdown timer, where an advertising discount is falsely suggested to be invariably active for a certain period of time, is a "false urgency" claim and is certainly a misleading advertisement under Section 2(47) if the “countdown” is indeed of a time-limited condition. Likewise, “drip pricing”, which involves charges imposed only after the consumer reaches the final step in making a purchase, could be interpreted as a deceptive technique to make a sale under this UTP definition, as the advertised price is not the actual price of the transaction.

There are other practices that do not fit as well into a doctrine that is based upon factual falsity. While confirm-shaming ("No, I don't want to save money") and interface interference (visually downplaying an undesirable option versus a desired option) do not misstate any fact, they do leave a negative impression of both options. Instead, they take advantage of well-known cognitive biases such as loss aversion, default-option bias and social-proof heuristics. In classical unfair trade practice doctrine, which grew out of experience with print and broadcast advertising, this is the doctrine of assumption of a discrete representation on which truth or falsity could be tested. The second category is the more easily understood dark patterns, where the cumulative impact of many individual interface features go unsuspected. That is covered in the 2023 Guidelines: instead of a false representation, the parties are required to establish that the “practices” were the actual practice, a doctrinal and legal, move away from representational accuracy and toward a more interface design intent and/or effect analysis akin to unconscionability rather than misrepresentation.

A subscription trap is another type, where it may be technically legal to take each step to get the user to stay signed up (have a form to submit, offer to keep them around, send them a confirmation email), but may violate the law by how many steps are involved (multiple barriers to canceling). This "asymmetry-of-effort" pattern has been of special concern to regulators in payments businesses and OTT subscription markets in particular and it is now also an intersection with the "consent-withdrawal" approaches required under India's data protection laws (as discussed below in Section 4).

The channel in which a dark pattern appears materially affects both its detestability and the applicable regulatory overlay. In e-commerce checkout flows, basket sneaking the automatic addition of an ancillary item, warranty, or donation to a cart without an affirmative opt-in; combines interface deception with what is, in substance, an unauthorized addition to the contract of sale, potentially implicating both the CPA 2019 and ordinary contract law on offer and acceptance. In over-the-top (OTT) and subscription commerce, the pairing of a frictionless, single-click enrolment with a multi-step, retention-offer-laden cancellation process has become common enough to attract specific regulatory attention internationally and squarely fits the CCPA's forced-action and subscription-trap categories. In detach and financial-services marketing aimed at first-time digital users, nagging; repeated, interruptive prompts to complete a purchase or upgrade; and trick questions; double-negative or ambiguous checkbox language pose a heightened risk precisely because the "average consumer" benchmark discussed below is least likely to reflect the actual, less experienced user base of these sectors.

Enforcement Gaps and Doctrinal Ambiguities

The current structure has three gaps that restrain its force in practice. The Guidelines' taxonomy is illustrative, not exhaustive and the definitions of concepts like 'definitive information' and 'the average consumer', as a consumer against whom the deceptiveness of the interface is judged, remain unstated for the context on the internet and likely to matter for interfaces used disproportionately by inexperienced, hurried or vulnerable consumers.

Second, enforcement is complicated if dark patterns operate in the overlap of jurisdictions between sectoral and general regulation. In this context, the Reserve Bank of India's e-mandate framework is as much at fault as the CCPA's guidelines since a subscription trap that entails auto recurring payments may be as much under RBI's jurisdiction as under the Insurance Regulatory and Development Authority of India. The CPA 2019 does not provide a formal mechanism for coordination between the CCPA and these sectoral regulators and there is a risk of regulatory gaps or of slightly duplicated regulatory action.

Third, of course, remedy is a limiting factor of deterrence. Although the CCPA can pursue action on its own and on complaint and can issue penalties and directions, the absence of a specific, low-friction private right of action reminiscent of the class action provisions of the CPA 2019 means that individual consumers do not have their own round-the-corner, low-impact private right of action to match the typically slight individual harm associated with each dark-pattern transaction. This gap is important because with dark patterns, the cumulative injuries may be much bigger even though each one might not be worth pursuing, as no individual consumer has any incentive to sue on their own - it's a case for the class.

A Brief Comparative Note

India has structured its approach differently from two other models of regulation that are often presented: the former categorically classifies the patterns being targeted and then lays down guidelines for dealing with them; the latter treats these patterns as examples of unfair practices in relation to which specific 'restrictions' should be enforced. The Digital Services Act (Regulation (EU) 2022/2065) of the European Union introduces a stand-alone prohibition for providers of online platforms to imply or mislead consumers, which is enforced by the DSA enforcement and penalty mechanism. The United States Federal Trade Commission has instead gone with its current power over unfair or deceptive acts or practices, bolstered by rulemaking and enforcement-based ATOs against individual practices, like those hampering consumer ability to cancel a subscription and not a broad named taxonomy like the CCPA. India's approach is an intermediate one, with more specificity at the taxonomic level than the US approach on a case-by-case basis, but, like the EU's DSA, classification relies on preexisting statutory categories and not a standalone prohibition. Practical implications of this positioning concerns the design of interfaces of their cross-border platforms, which are present in three key markets and need to be shaped according to three distinct logics: categorical prohibition, case-by-case enforcement and guideline-based reclassification.

Recommendations

Toward a Compliance-by-Design Framework: To marketing and product teams, compliance has to be achieved during design and not after the fact thru legal. A practical set of criteria, based on the above analysis, would require parity of effort (in separate steps) between the opt-in action and the opt-out action, with the number of steps required to opt out matching those required to opt in; evidentiary substantiation to be performed prior to publishing any time-bound or scarcity-based claim; neutral phrasing of accept/decline choices (i.e. no "authorized" language that could create a sense of loss or degraded; upfront itemised pricing to reveal all pricing components prior to the final action required to opt-in; and clear, unbundled consent requests, not combing many different requests together (marketing communications, data sharing, subscription renewal) into a single step.

Three doctrinal clarifications would help to reinforce the framework for regulators/reearchers. A less ambiguous interpretation of the "average digital consumer" standard – based on guidance or a statute and more aligned with India's dynamic and diverse first time internet user population – would lessen the interpretive ambiguity. To apply a rebuttable presumption of unfairness for each of the named dark patterns namely shifting the burden to the advertiser to prove a lack of deceptive intent rather than a CCPA burden to prove deceptive intent would dovetail with the suggested aggregative, low per-transaction harm of dark patterns. Finally, a formal coordination mechanism among the CCPA and sectoral regulators (RBI, IRDAI and TRAI) would fill some of the identified jurisdiction gaps (in Section 4) with regard to dark patterns integrated into payment and subscription processes.

Dark-pattern compliance also highlights a curricular issue, albeit one that can be addressed a bit more sparsely, which involves the fact that dark patterns is today a joint competence: marketing graduates need some understanding of what they can and cannot do when designing pages in order to avoid legality issues, but legal graduates need some understanding of the marketing lexicon in which the legality now emerges. The risk of this pedagogy is it may result in a consumer protection lawyer and digital marketer that only know how to respond to the violation once it's been designed and deployed; rather than first, where a "compliance by design" intervention is still relatively inexpensive.

CONCLUSION

The 2023 Guidelines are doctrinally important because, instead of lookout to representational accuracy, interface design scrutiny has become the standard to measure unfair digital marketing activity. This change is needed: there's almost never an actual lie that is the core of what classical advertising law was designed to protect against – and the damage inflicted by dark patterns is often necessarily part of a cumulative system of a user journey rather than any one specific user-facing statement. This model structure is still an ongoing project. Each piece of clarity; definitional, formal inter-regulator coordination and presumption-shifting enforcement; would add to deterrence without replacing the flexible, guidance-based enforcement strategy that the CCPA has so far taken. So, the safest way for marketing practitioners to get right is to understand that there are no "specials" or "edge cases" at stake – these dark patterns are just constraints to include in the interface's design from the start.

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