ASCI Proposes Guidelines on E-commerce 'Dark Patterns'

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'First published on LEXOLOGY' By: Safir Anand The Advertising Standards Council of India ('ASCI') recently published a discussion paper highlighting manipulative digital user interfaces, which have led to pernicious effects on consumers and their freedom to make unbiased choices online. While technology companies work on newer methods every day to accelerate user engagement, most such formulae lead to prejudicial impacts on consumer stakes. In the same vein, the ASCI set up an able 12-member task force comprising myriad stakeholders to deliberate upon such misleading and unfair practices being adopted by digital companies, more commonly known as 'dark patterns', and possible tackling methods. The ASCI, in their report, has primarily concentrated on violative practices or dark patterns of e-commerce companies, thereby proposing to bring the latter under the purview of ASCI guidelines on advertisements and associated consumer protection. Highlighting the adversities in this realm, the ASCI stated 'Dark patterns undermine how consumers view advertising. The increasing presence of dark patterns force consumers to be on guard and be suspicious of the online space. In the long run, such tactics ruin customer experience, lower brand image and loyalty and increase abandonment.' The ASCI, being hopeful of expanding the ambit of their code on misleading advertisements, has enlisted, inter alia, the below dark patterns:

(a) Drip pricing, which essentially entails that only a partial cost of a product is revealed to the consumer at the initial stage, and the final price (including taxes, convenience fee, etc.) is applied only at the time of check-out. (b) False urgency, one of the most common dark patterns, which refers to falsely implying that a particular product is running low on stock. (c) Privacy (though not under the direct encirclement of advertising content), which is a concern prompted by interfaces tricking users to share confidential information, more than they intend to. (d) Sneak in Basket, referring to instances wherein additional products are added to the consumers' e-basket without their knowledge or intimation.

In order to augment the applicability of the ASCI code on dark patterns, the self-regulatory body has also cited suggested alternatives to dark patterns for UX (User Experience) designers and brands, as put forth by UX expert Michael Craig. Through the same, the ASCI has attempted to drive businesses to modulate their online advertisements, which can eventually help build a fair online space for consumer navigation. The ASCI has now invited comments, inputs and suggestions on the extended propositions on this front, from businesses and consumers alike, by the 31st of December 2022.

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