



# Update on the Regulatory Trends on Dark Patterns

2023.08.23

Ensuring fair trade in the platform sector by combating deceptive consumer practices has been at the forefront of President Yoon’s agenda since he took office in May 2022. The National Assembly and the Korean government are actively addressing the issue of “dark patterns” in the online space. Momentum to regulate such deceptive online practices is anticipated to only grow in the coming months.

Read on to delve deeper into the measures undertaken by the National Assembly and the government agencies to confront online dark patterns.

## Legislative Status

Currently tabled at the National Policy Committee are five amendment bills that concern dark patterns: four that seek to amend the Act on the Consumer Protection in Electronic Commerce (“**E-Commerce Act**”) and one that seeks to amend the Personal Information Protection Act (“**PIPA**”).

Proposed Legislation	Description
<a href="#">Proposed amendment to the E-Commerce Act</a> (proposed in April 2023)	Mandates e-commerce businesses to notify consumers of changes in the fee arrangement (i.e., converting free trials to paid subscriptions) or increased charges, and to indicate the total price to be paid by consumers. The bill also bans drip pricing, bait-and-switch, preselection, roadblocks to cancellation, and nagging (explained in further detail below).
<a href="#">Proposed amendment to the E-Commerce Act</a> (proposed in March 2023)	Prohibits e-commerce businesses from inducing consumers into consenting to automatic payments, processing recurring payments without consent, or interfering with account termination.
<a href="#">Proposed amendment to the E-Commerce Act</a>	Mandates e-commerce businesses to design a UI that can help prevent harm arising from user mistakes.

(proposed in July 2022)	
<a href="#">Proposed amendment to the E-Commerce Act</a> (proposed in June 2022)	Prohibits e-commerce businesses from interfering with consumers making informed decisions through UI designs or alterations or manipulation thereof.
<a href="#">Proposed amendment to the Personal Information Protection Act</a> (proposed in February 2023)	Prohibits personal information controllers from collecting personal information by inducing consumer to make unintended decisions or decisions that undermine the consumers' rights.

## Regulatory Trend

Establishing regulatory measures to control online dark patterns was a common policy goal found in 2023 work plans announced by numerous government bodies, including the Fair Trade Commission (“**KFTC**”), the Personal Information Protection Commission (“**PIPC**”), and the Korea Communications Commission (“**KCC**”).

The most notable development in this regard was the KFTC’s release of the *Guidelines on the Voluntary Management of Online Dark Patterns* (“**Guidelines**”) on July 31, 2023. The Guidelines were released to implement the “Policy Direction for Protecting Consumers from Online Dark Patterns” the KFTC announced in April 2023. The Guidelines classify dark patterns into 4 major categories and 19 distinct types. They apply to e-commerce transactions subject to the E-Commerce Act and online labeling and advertising regulated by the Labeling and Advertising Act.

### Types of Dark Patterns and Recommendations for Businesses

Category	Types	Recommendation
Defrauding	<u>Forced Continuity</u> : causing automatic renewals or payments by converting free trials to paid subscriptions or charging higher prices without user notice or consent.	<ul style="list-style-type: none"> <li>• Obtain express consent from consumers when converting free trials to paid subscriptions or charging higher prices.</li> <li>• Notify consumers of major changes at least 7 days before the change takes effect.</li> </ul>
	<u>Drip Pricing</u> : intentionally advertising a low price initially and revealing additional fees as they progress through the purchase, with the total amount only disclosed at the final stage of the transaction.	<ul style="list-style-type: none"> <li>• When indicating prices, include all mandatory charges over which consumers lack control.</li> </ul>
	<u>Sneak into Basket</u> :	<ul style="list-style-type: none"> <li>• Do not slip products into consumers’ shopping</li> </ul>

	slipping an item of goods not selected by the consumers into the shopping cart to induce their purchase.	<p>carts to induce their purchase.</p> <ul style="list-style-type: none"> <li>Note also that this type of dark pattern may trigger a violation of Articles 13(2), 14(2), and 21(1)(iv) of the E-Commerce Act.</li> </ul>	
Misleading	<p><u>False Discount Claims:</u> inducing consumers to purchase a product at a high price by providing false information on discounts.</p>	<ul style="list-style-type: none"> <li>Do not provide consumers with false information on the standard price, sales price, and discount rates.</li> <li>Do not (i) delete negative consumer reviews or arrange reviews to hide negative reviews and (ii) write fake positive reviews.</li> <li>Do not state that there is an inventory (or show labels or advertisements to such effect) when there is none. If there is no stock remaining because all of the products have been sold, appropriate measures should be taken as soon as possible.</li> <li>When producing content (e.g., advertisement) or outsourcing the production thereof, clearly indicate the fact that the content is an advertisement.</li> <li>Note also that the above types of dark patterns may trigger a violation of Article 21(1)(i) of the E-Commerce Act or Article 3(1) of the Labeling and Advertising Act.</li> </ul>	
	<p><u>False Recommendations:</u> deleting negative consumer reviews or uploading fake positive reviews.</p>		
	<p><u>Bait and Switch:</u> luring consumers through false labels or advertisements of products not actually available for sale.</p>		
	<p><u>Disguised Ads:</u> formatting advertisements to make them appear as non-advertising content.</p>		
	<p><u>Trick Questions:</u> asking questions to steer consumers to provide answers or make decisions that are unintended or asking questions that require extremely close attention to grasp their accurate meaning.</p>		<ul style="list-style-type: none"> <li>Phrase questions and design interfaces in a way that allows consumers to clearly understand what it is that they are consenting to or refusing.</li> <li>Note that this type of dark pattern may trigger a violation of Article 21(1)(i) of the E-Commerce Act.</li> </ul>
	<p><u>False Hierarchy:</u> using visual designs to mislead consumers into believing that they have no option but to select a given choice.</p>		<ul style="list-style-type: none"> <li>When configuring a web page with options available for consumers, present the options in a like manner.</li> <li>For example, do not present the “Cancellation” tab in gray text, as if to mislead consumers into believing that they do not have the option to cancel.</li> </ul>
<p><u>Preselection:</u> providing consumers with a pre-ticked checkbox that benefits the companies, thereby inducing consumers to go with the option already chosen for them.</p>	<ul style="list-style-type: none"> <li>Where consumer consent or selection is necessary, design the interface in a way that requires consumers to take affirmative actions (e.g., clicking or touching a checkbox) for such a decision to take effect.</li> </ul>		

Obstructive	<p><u>Roadblocks to Cancellation:</u> obstructing consumers’ attempts to cancel an order or close an account by complicating the process beyond the original purchase or registration procedure, or by restricting the methods of cancellation and termination.</p>	<ul style="list-style-type: none"> <li>• Allow consumers to cancel or withdraw in the same way they placed an order or signed up for services.</li> <li>• Ensure that the process for cancellation or account closure is either simpler or comparable in complexity to the procedure consumers follow when placing an order or registering for a service.</li> </ul>
	<p><u>Hidden Information:</u> concealing, omitting, or downplaying information crucial for making informed decisions.</p>	<ul style="list-style-type: none"> <li>• Do not entice consumers by concealing, omitting, or downplaying vital information about products.</li> <li>• Note also that this type of dark pattern may trigger a violation of Articles 13(2) or 21(1)(i) of the E-Commerce Act.</li> </ul>
	<p><u>Price Comparison Prevention:</u> making it challenging for consumers to compare prices or purchasing conditions.</p>	<ul style="list-style-type: none"> <li>• While online platforms are not liable for price comparison obstructions caused by inaccurate information provided by the sellers, make sure to design an interface that allows accurate comparison of product information.</li> </ul>
	<p><u>Click Fatigue:</u> inducing consumers to give up on making a choice that benefits consumers or gathering information by causing fatigue through an excessive number of clicks required for the process.</p>	<ul style="list-style-type: none"> <li>• Create an environment that allows efficient use of online shopping websites.</li> </ul>
Pressuring	<p><u>Nagging:</u> pressing consumers to take a certain action through repeated demands/requests (e.g., pop-up notifications).</p>	<ul style="list-style-type: none"> <li>• Do not ask consumers more than twice as to whether they wish to reconsider their choices.</li> <li>• Provide consumers with an option to refuse, for a specific amount of time, a pop-up window (or others similar in nature) that requires consumers to affirm or reconsider their choices.</li> </ul>
	<p><u>Confirm Shaming:</u> employing emotional language to pressure consumers into making a certain choice.</p>	<ul style="list-style-type: none"> <li>• Do not use emotional language to the degree that it makes it difficult or impossible for consumers to accurately understand its intent/meaning.</li> </ul>
	<p><u>False Limited Time Message:</u> pressuring consumers into making a purchase by falsely indicating that the discounted price applies only for a limited time.</p>	<ul style="list-style-type: none"> <li>• Do not provide false information on time-limited offers, remaining stock, or other consumers’ activities.</li> <li>• Note also that providing false information may constitute a violation of Article 21(1)(i) of the E-</li> </ul>

	<p><u>False Low Stock Messages:</u> pressuring consumers into making a purchase by falsely indicating that a product is either out of stock or in high demand.</p>	<p>Commerce Act or Article 3(1) of the Labeling and Advertising Act.</p>
	<p><u>False Activity Messages:</u> pressuring consumers into making a purchase by indicating the number of consumers who have recently viewed or purchased the product.</p>	

As with many other guidelines, the Guidelines are not legally binding, although its release may certainly be a first step to wider regulations. In fact, following its release of the Guidelines, the KFTC has made it clear that it is contemplating measures to ensure effective regulation of the dark patterns, including by amending current laws and regulations to set out the necessary legal basis for regulatory enforcement and by conducting fact-finding investigations into companies that are suspected of aggravating user harm through their use of dark patterns.

## Heightened regulatory scrutiny likely down the road

Recently, the PIPC and the KCC have also reaffirmed their determination to prepare effective regulatory measures to combat dark patterns. Specifically, the PIPC Chairman strongly criticized the dark patterns as a new evil and expressed his intention to take steps to amend relevant laws. Similarly, the KCC pledged to examine consumer harm resulting from dark patterns. Active regulatory efforts by the KCC, possibly leading to the formulation of a policy scheme to better address the harms resulting from the dark patterns, are thus also expected.

Given the National Assembly and the Korean government’s keen interest in the businesses’ use of dark patterns, it is advised that companies closely monitor developments within the National Assembly and the government bodies as it appears likely that companies engaging in deceptive practices through dark patterns will face more scrutiny going forward.

[\[Korean version\]](#) 다크패턴 관련 규제동향

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