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A SHORT NOTE ON DARK PATTERNS AND INTELLECTUAL PROPERTY RIGHTS

Dark Pattern is a term used to describe any practice or a deceptive design pattern employed by online platforms/e-commerce websites/other websites to influence, deceive the consumers to do something which they might not be willing to do if they had the full knowledge about the actual facts or had an option to make a choice. Creating false urgency and showing messages like “Only 1 pair left”, asking to turn the notifications ON without giving or blurring the option to say NO or creating false associations with recognized brands are some of the common examples of **Dark Patterns**.

As a preemptive approach towards **Dark Patterns**, the Department of Consumer Affairs (DoCA) proposed draft guidelines, dated 07.09.2023, on prevention and regulation of **Dark Patterns** seeking comments/suggestions of the public. The draft guidelines contained a list of 10 *Specified Dark Patterns* and have decided to include 3 more subsequently.

Presently, such website/online platform owners are using as many ways to increase the reach of its sites as well as conversion-rates on its respective sites by adopting **Dark Patterns** irrespective of its harm to the existing Intellectual Property Rights (IPRs) or consumer rights. Using **Dark Patterns** across platforms involves risk and a challenge of infringement/passing off to the existing IPR holders.

EXAMPLES OF DARK PATTERNS AFFECTING INTELLECTUAL PROPERTY RIGHTS

Examples of Trademark and Copyright infringement/passing off:

- A website claiming sale of products of a highly reputed company for a cheaper price using a blurred/deceptive logo of such company.
- An entity running a website with a domain name that is deceptively similar/identical to that of a popular brand/trademark claiming to offer the identical or similar services/goods to that of the original trademark/brand in order to confuse the consumers. It may also offer entirely dissimilar services/goods in order to deceive the consumer into believing that it is a subsidiary or in partnership with the original trademark/brand.
- A website showing the pictures of trademarked products but on visiting the link deceive into buying a similar but not the same product (Bait and Switch).
Such technique can also be used by authorized sites by intentionally putting less stock on the website and creating false urgency, to coerce the consumers into making quick decisions and baiting them to buy.



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- A website offering products with a name and description same as that of an original trademarked product and having an interface same/similar to the website of the original trademark holder but selling a different/inferior product.
- A website using images of celebrities and famous personalities wherein the products being used/worn by them are referred to be available at the said website, which are only similar products, on the contrary, only to deceive the consumers. (*False Association*)
- A website offering a service, for instance, downloading or installation of a certain **copyrighted** software, which is not authorised to do so and on clicking the link redirects:
 - ❖ To a website which has no relation with regards to the opted service.
 - ❖ To a website providing similar service or a close alternative to the service.
 - ❖ To download a software which provides a similar service or software.

While the above are only examples and the acts under the understanding of Dark Patterns may be a marketing tactic, the same have the chances of getting indulged in infringement and passing off of Intellectual Property Rights. While this stands, it is imperative that strict guidelines specific to Intellectual Property Rights be introduced and enforced.

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