

Dark Patterns – How Brands Can Avoid Deceptive User Interfaces in Ad Campaigns

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Privacy and Cybersecurity co-leader Liisa Thomas published an article on *AdAge.com* in connection with ensuring brands' advertising campaigns are not labeled "dark patterns." As Liisa describes in her article, the term "dark pattern," that was coined in 2010 to describe deceptive user interfaces, has been gaining traction over the past several years. The term suggests an effort to trick, deceive, mislead and otherwise hoodwinking the average consumer. These are not the kind of activities in which most advertisers think they are engaging when creating a campaign. Instead, brands' goals are to create a meaningful and valuable connection with consumers. Regulators, however, seem to think differently.

Liisa further explains that when designing ad campaigns that include aspects of information collection, advertisers should take heed. There is an increasing fear that marketers, in their zeal to cut through the noise and reach consumers, they are creating connections by "defaulting" consumers into connections. Connections that consumers might not otherwise have agreed to.

To help advertisers avoid their next interactive advertising campaign labeled a dark pattern, Liisa points to the following recommendations from guidance released by the FTC, the EDPB, as well as requirements that exist under laws such as US state negative option laws, the forthcoming California Age-Appropriate Design Code Act (and similar UK law), California's CCPA, EU's GDPR and its forthcoming EU Digital Services Act. Themes run throughout these laws and guidelines, and are worth keeping in mind when collecting information from consumers:

1. Do not distort a consumer's ability to make informed choices.
2. Look at the interface from the consumer's perspective.
3. Get express consent for information uses.
4. Do not default to use information or collect information in unusual ways or to collect more than is "reasonable."

Read the full article on *AdAge.com* here (a subscription is required).

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