

Shedding Light on Dark Patterns: What They Are and How And Why Companies Should Avoid Using Them

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What's a “Dark Pattern” Anyway?

- “a user interface that is designed to override a user’s own judgment and cognition”
- techniques used to manipulate users to do things they might not otherwise do

...Just marketing?

FTC Workshop in 2021

Some of the topics the workshop examined included:

- how dark patterns differ from sales tactics employed by brick-and-mortar stores;
- how they affect consumer behavior, including potential harms;
- whether some groups of consumers are unfairly targeted or are especially vulnerable;
- what laws, rules, and norms regulate the use of dark patterns; and
- whether additional rules, standards, or enforcement efforts are needed to protect consumers.

FTC Staff Report in 2022

- Design Elements That Induce False Beliefs
- Design Elements that Hide or Delay Disclosure of Material Information
- Design Elements that Lead to Unauthorized Charges
- Design Elements that Obscure or Subvert Privacy Choices

Sam Levine, Director, FTC Bureau of Consumer Protection:



“Is a consumer more likely to turn over personal information when a button is green and bolded, if the alternative is faded and gray? Will a consumer be more likely to order a product if there’s a ticking clock in the background, or if there’s a message that 20 other shoppers have this item in their cart? Is a consumer more likely to take an action if they are repeatedly and disruptively prompted with a request?”

“While dark patterns may manipulate consumers in stealth, these practices are squarely on the FTC's radar.”

NAD's View

“They’re not new but they’re tricky”

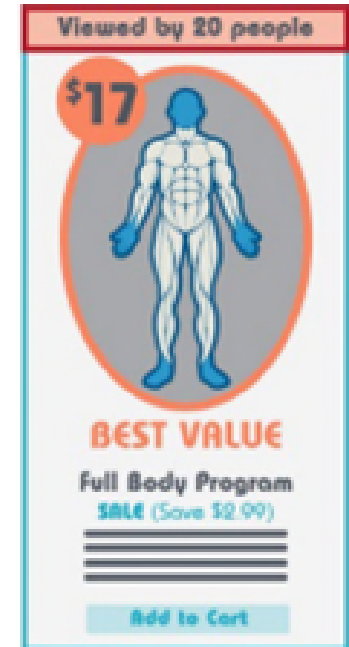
Check out NAD's Ad Watcher's Podcast: Season 2, Episode 7, “Where is the line between ethical design and dark patterns?”

<https://bbbprograms.org/programs/advertising/all-programs/truth-in-advertising>

Dark Pattern Type: Endorsements

FTC Examples

Type	Description	Example(s)
False Activity Messages	Making false claims about others' activity on a site or interest in a product.	"24 other people are viewing this listing"
Deceptive Consumer Testimonials	Using phony customer endorsements or presenting other people's experience without revealing material information, such as: (i) the endorsers were compensated; (ii) the endorsers have a connection to the company, like being an employee or a family member; or (iii) the endorsers' experiences aren't typical of what others will experience in similar circumstances.	
Deceptive Celebrity Endorsements	Featuring testimonials that falsely appear to come from celebrities, or using celebrities or prominent influencers to endorse a product without disclosing that the celebrity was paid for the endorsement or was given the product for free.	
Parasocial Relationship Pressure	Using characters that children know and trust to pressure them into making a certain choice.	Using a well-known cartoon character to encourage children to make in-app purchases.



FTC v. LendEDU

- Dark patterns include:
 - False claims about the site's integrity and independence
 - Rankings and ratings based on payment to site by advertisers
 - Undisclosed material connections
 - Fake consumer reviews
- \$350,000 payment and changes to the site

The screenshot shows the LendEDU website with a navigation bar at the top containing links for 'Refinance Student Loans', 'Private Student Loans', 'Personal Loans', 'News', and 'Login'. The main content area features a large banner for 'Student Loan Consolidation & Refinancing Lenders for 2018'. The banner includes the text 'STUDENT LOAN REFINANCING & CONSOLIDATION 2018' and a woman's image. Three green circular callouts highlight 'Lower Interest Rate', 'Lower Monthly Payment', and 'Save Thousands Today'. Below the banner, it says 'Updated: 3/28/2018' and asks 'Looking to refinance student loans? Want to consolidate student loans?'. A paragraph below states: 'Today, 7 out of 10 graduates are graduating with some form of student loan debt. With an average balance of \$28,000, student debt is a big part of the average college graduate's life.' To the right of the banner is a 'Our Top Picks' section listing lenders: SoFi (5 stars), earnest (5 stars), LendKey (5 stars), EDUCATION LOAN FINANCE (5 stars), and Citizens Bank (5 stars), each with a 'Learn More' link.

FTC v. Sunkey

- Dark patterns include:
 - False affiliation: use of copycat military recruitment websites, appearing to be official recruiting sites operated by the US military
 - False promises about how information provided by site visitors would be used
 - Use of information provided for lead generation
- \$11+million civil penalty judgment



NAD #7131 (Smile Prep)

- NAD reviewed an advertiser-owned product review site which a competitor challenged as misleading for (among other things) falsely conveying that it is an impartial and independent editorial site.
- NAD cited FTC's dark pattern report and recommended that the advertiser avoid conveying the inaccurate message that it does not give preferential treatment in its recommendations, reviews, and rankings to its affiliate partners and that its rankings, reviews, and product information are impartial.



Dark Pattern Type: Scarcity

FTC Examples

Type	Description	Example(s)
False Low Stock Message	Creating pressure to buy immediately by saying inventory is low when it isn't.	"Only 1 left in stock – order soon"
False High Demand Message	Creating pressure to buy immediately by saying demand is high when it isn't.	"20 other shoppers have this item in their cart"

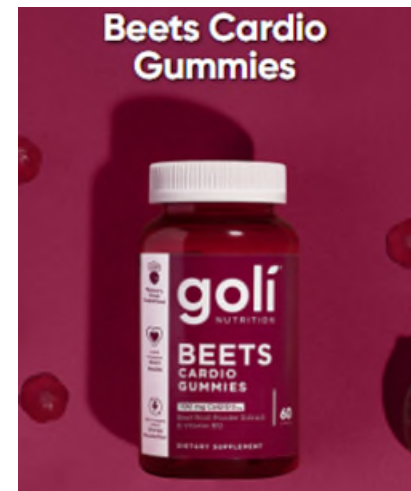
NAD #7059 (Goli)

NAD examined several claims made by a dietary supplement company, including time-limited sales claims which the competitor argued constituted dark patterns because they create false urgency.

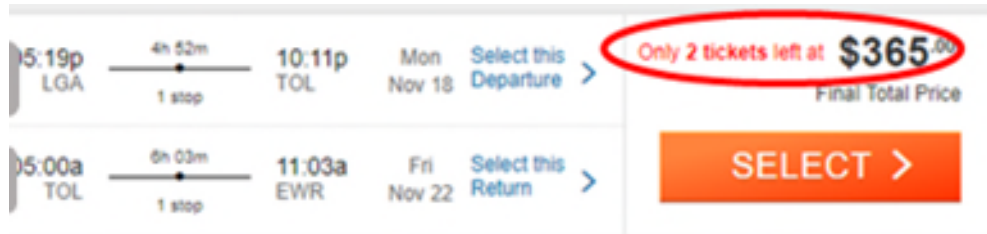
NAD determined that statements like “supplies limited” and “limited supplies remaining” can’t be supported by a showing of previous exhaustion of product since these claims convey current shortage of product.

NAD recommended revisions

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NY AG v. Fareportal



- Dark patterns include:
 - false real-time messages about limited number of tickets available at advertised price
 - false claims that specific number of consumers were currently looking at the same tickets
 - fake countdowns
- \$2.6 million in disgorgement and costs

Dark Pattern Type: Urgency

FTC Examples

Type	Description	Example(s)
Baseless Countdown Timer	Creating pressure to buy immediately by showing a fake countdown clock that just goes away or resets when it times out.	
False Limited Time Message	Creating pressure to buy immediately by saying the offer is good only for a limited time or that the deal ends soon – but without a deadline or with a meaningless deadline that just resets when reached.	“Available for a limited time”
False Discount Claims	Creating pressure to buy immediately by offering a fake “discounted” or “sale” price.	Strike-through price advertising with false former price.

Dark Pattern Type: Obstruction

FTC Examples

Type	Description	Example(s)
Price Comparison Prevention	Keeping shoppers from easily comparing prices by bundling things, using different measures (price per unit v. price per ounce), or listing the price per payment (such as \$10 per week) without disclosing the total number of payments or overall cost.	
Roadblocks to Cancellation	Making it easy to sign up but hard to cancel, by requiring people to go through tedious, time-consuming cancellation procedures.	Letting people sign up online but making them use another means to cancel. Requiring that people cancel by phone but then concealing the phone number, shortstaffing the cancellation line, opening the line during limited hours, or requiring people to listen to a sales pitch or upsell while trying to cancel.
Immortal Accounts	Making it hard or impossible to delete an account.	

PA AG v. Adore Me

Adore Me VIP

Monthly membership for access to discounted sets & first dibs on our monthly drops.



- Dark patterns include:
 - misrepresentations that discounted prices were time limited
 - pre-checked boxes enrolling consumers in the auto-renewing program
 - making it difficult for consumers to cancel memberships
- \$2.35 million settlement

NAD #6091 (Fabletics)

In a routine monitoring case, NAD opened this challenge due to concerns that the advertising for the site's discount offers could mislead consumers because the advertising failed to disclose the material limitations of the discount offer, specifically that VIP membership obligates consumers to opt out on a monthly basis to avoid repeated charges

NAD recommended revisions to better disclose the material terms and limitations of the discount offer and to do so on the same page where the discount offers are made.



NAD #6145 (Stub Hub)

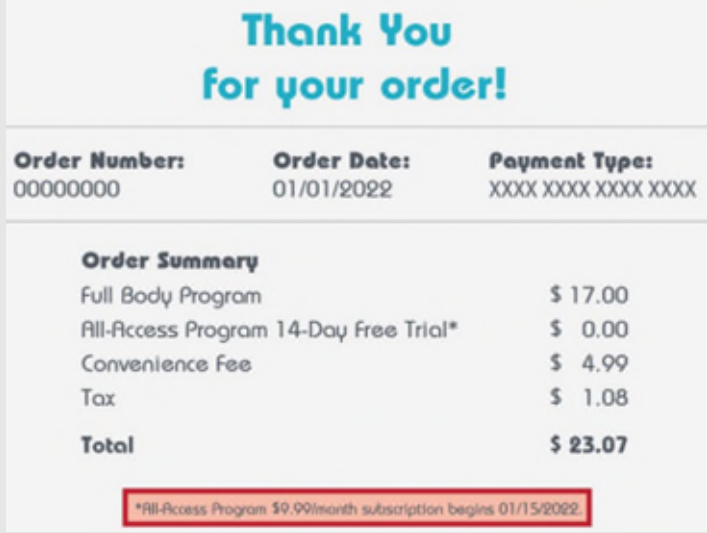
In routine case, NAD examined whether consumers could be misled about the total cost of the tickets, including the pricing details of all fees, because the fees are not disclosed when the initial ticket price is displayed.

NAD recommended revisions to better disclose the service fees and referred case to FTC because advertiser declined to comply

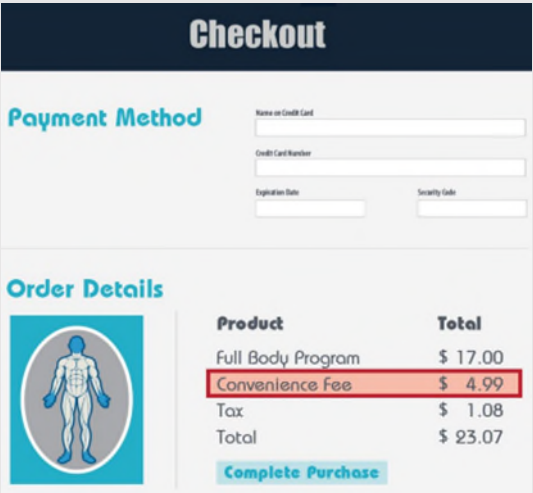



Dark Pattern Type: Sneaking or Hiding Information

FTC Examples

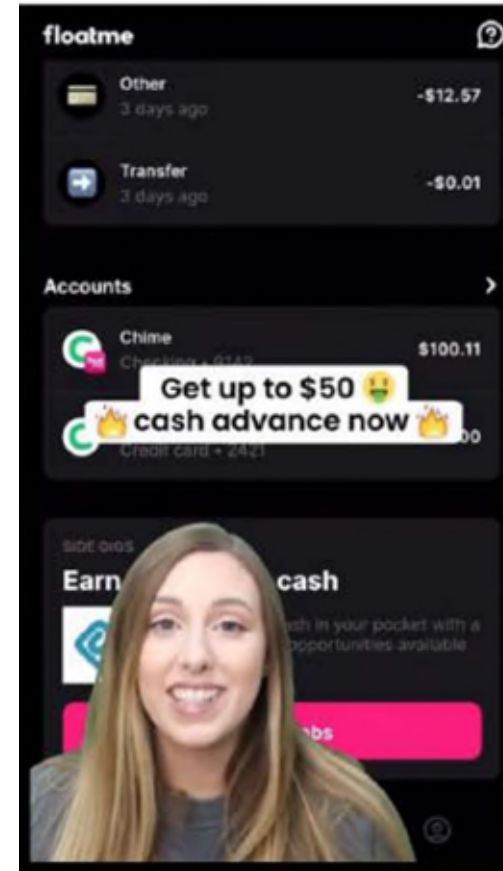
Type	Description	Example(s)															
Sneak-into-Basket	Automatically adding items to the shopping cart without a shopper's permission, or tricking a shopper into buying unwanted items by using a pre-checked box.																
Hidden Information	Hiding material information or significant product limitations from people.	 <p style="text-align: center;">Thank You for your order!</p> <table border="0" style="width: 100%;"> <tr> <td>Order Number: 00000000</td> <td>Order Date: 01/01/2022</td> <td>Payment Type: XXXX XXXX XXXX XXXX</td> </tr> </table> <table border="0" style="width: 100%; margin-top: 10px;"> <tr> <td colspan="2">Order Summary</td> </tr> <tr> <td>Full Body Program</td> <td style="text-align: right;">\$ 17.00</td> </tr> <tr> <td>All-Access Program 14-Day Free Trial*</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>Convenience Fee</td> <td style="text-align: right;">\$ 4.99</td> </tr> <tr> <td>Tax</td> <td style="text-align: right;">\$ 1.08</td> </tr> <tr> <td>Total</td> <td style="text-align: right;">\$ 23.07</td> </tr> </table> <p style="text-align: center; margin-top: 10px; border: 1px solid red; padding: 2px;">*All-Access Program \$9.99/month subscription begins 01/15/2022</p>	Order Number: 00000000	Order Date: 01/01/2022	Payment Type: XXXX XXXX XXXX XXXX	Order Summary		Full Body Program	\$ 17.00	All-Access Program 14-Day Free Trial*	\$ 0.00	Convenience Fee	\$ 4.99	Tax	\$ 1.08	Total	\$ 23.07
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Hidden Costs	Adding hidden fees or other charges that people don't know about.	An undisclosed origination fee deducted from loan proceeds.															

FTC Examples

Type	Description	Example(s)										
<p>Drip Pricing</p>	<p>Advertising only part of a product’s total price initially and then imposing other mandatory charges late in the buying process.</p>	 <p>The screenshot shows a checkout page with a 'Payment Method' section and an 'Order Details' section. The 'Order Details' section lists the following items and prices:</p> <table border="1"> <thead> <tr> <th>Product</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Full Body Program</td> <td>\$ 17.00</td> </tr> <tr> <td>Convenience Fee</td> <td>\$ 4.99</td> </tr> <tr> <td>Tax</td> <td>\$ 1.08</td> </tr> <tr> <td>Total</td> <td>\$ 23.07</td> </tr> </tbody> </table> <p>The 'Convenience Fee' is highlighted with a red box, illustrating the practice of drip pricing where the full cost is not disclosed until the final checkout stage.</p>	Product	Total	Full Body Program	\$ 17.00	Convenience Fee	\$ 4.99	Tax	\$ 1.08	Total	\$ 23.07
Product	Total											
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<p>Hidden Subscription or Forced Continuity</p>	<p>Offering a free trial and, at the end of the trial, automatically and unexpectedly charging a recurring fee if consumers don’t affirmatively cancel, or offering a product for a small one-time fee, then automatically enrolling people into a subscription or continuity plan without their consent.</p>	 <p>The screenshot shows a product page for '1 Month Supply of Garcinia Cambogia Extract'. It features a 'FREE TRIAL' offer with a 'SELECT PACKAGE' button. Below the product image, there is a disclaimer: 'You must pay a shipping and handling fee of \$4.95 for us to send you a full 30 day supply of Garcinia Cambogia Extract. We ship the product the day after you place your order (except that orders placed Saturday-Sunday will be shipped the following Monday). You will have 14 days from your original order date to see if Pure Garcinia is right for you. If you are unhappy with the product at any point, if you are satisfied with our product, then to making we will bill you \$79.97 for your initial order, and every thirty days thereafter we will send you a free 30 day supply of our product, and automatically bill you the base price of \$79.97. To cancel this, please read our terms and conditions for more details.'</p>										
<p>Intermediate Currency</p>	<p>Hiding the real cost by requiring consumers to buy things with virtual currency.</p>	<p>Coins or acorns in kids’ apps.</p>										

Latest Case: FTC v. Floatme

- Dark patterns used by cash advance app include:
 - False promises and misrepresentations about how the service works
 - Deceptive claims during enrollment
 - Undisclosed eligibility requirements
 - Charging consumers without consent
 - Difficult cancellation
 - Discrimination against consumers on public assistance
 - Fictitious scenarios and mock testimonials
- \$3 million payment and substantial changes to business, including requirement to conduct to A/B and multivariate testing



NAD #7092 (Pier 1)

- NAD examined Pier 1's use of an advertised price tied to membership in a fee-based rewards program. The online functionality included the following features:
 - A Pier 1 Rewards subscription, along with the \$9.99 charge, appeared automatically in a consumer's cart when they added an item to purchase.
 - The enrollment toggle was pre-checked "on" and had to be toggled to remove the subscription charge.
 - The details about the purchase appeared below the toggle and the full terms for the Pier 1 Rewards program were made available behind a "learn more" hyperlink.
- NAD recommended revisions



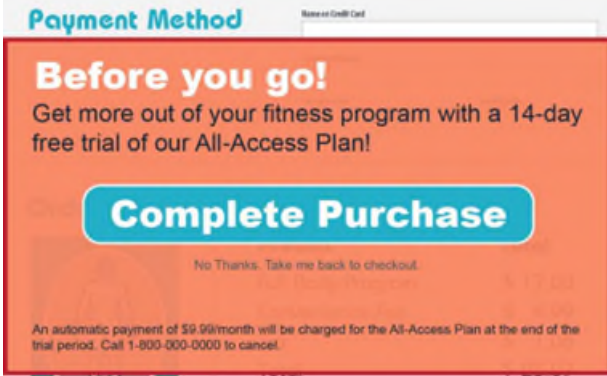

The logo for Pier 1, featuring the word "Pier" in a blue serif font and "1" in a blue sans-serif font, positioned between two horizontal lines.

NAD #7099 (Blue Apron), #7136 (HelloFresh), #7179 (Wall Street Journal)

- **Blue Apron:** NAD inquired whether Blue Apron’s claim that “canceling meals is easy” was substantiated. NAD noted that Blue Apron provided customers multiple methods to cancel via its app and its website and the steps for doing so are easy to find and follow. During the course of the inquiry, Blue Apron discontinued its practice of requiring consumers to email Blue Apron for instructions on how to cancel. Hence, NAD found that the claim is truthful and substantiated.
- **HelloFresh:** NAD inquired into several of HelloFresh’s claims regarding its subscription service, including its claim that its plans are flexible and easy to cancel. Citing the FTC’s guidance that cancellation mechanisms should be as easy to use as signing up and employ the same functionality, NAD determined that HelloFresh’s functionality was in line with this guidance and that therefore the claim was substantiated. However, NAD recommended more disclosures during the subscription sign-up process and that Hello Fresh discontinue its use of flash sale claims and a countdown timer unless the applicable sale or offer is actually time-sensitive.
- **WSJ:** NAD inquired into WSJ’s “cancel anytime” claim for its newspaper subscription service. NAD was concerned that although consumers could sign up online, they couldn’t cancel online in all states. Those consumers would have to call to cancel. NAD determined that the “cancel anytime” claim conveys to consumers that they’d be able to cancel easily, and by the means they used to subscribe. Since WSJ updated its procedures to allow for online cancellation for all subscribers, NAD found that its “cancel anytime” claim was substantiated.

Dark Pattern Type: Interface Interference

FTC Examples

Type	Description	Example(s)
Misdirection	Using style and design to focus users' attention on one thing in order to distract their attention from another.	Presenting the subtotal price in a bright green highlighted box, then listing additional mandatory taxes and fees below in a non-highlighted section so users don't notice their final total will be higher.
False Hierarchy or Pressured Upselling	In giving options, using contrasting visual prominence to steer users into making a certain selection.	
Disguised Ads	Formatting advertisements to falsely appear to be unbiased product reviews or independent journalism, or presenting a ranking list, search engine, or comparison-shopping site as neutral and unbiased when it is actually based on advertising dollars.	
Bait and Switch	A choice or interaction leads to an unexpected, undesirable outcome.	A user clicks the X in the top right corner of a pop-up but, instead of closing the box, it downloads software.

FTC v. Publishers Clearing House

- Dark patterns include:
 - trick wording
 - visual interference
 - easy-to-miss disclosures
 - aggressive emails
 - difficult entry process without purchase
- \$18.5 million payment and substantial changes



Dark Pattern Type: Coerced Action

FTC Examples

Type	Description	Example(s)
Unauthorized Transactions	Tricking people into paying for goods or services that they did not want or intend to buy, such as mislabeling the steps in a transaction or failing to obtain the express informed consent of the accountholder.	A shopping website button labeled “Next” that people think will lead to the next screen but, instead, processes the transaction immediately. A one-click button in children’s gaming apps that charges parents real money.
Auto-Play	Automatically playing another video once one video ends in a manner that is unexpected or harmful.	After the first video, a less kid-friendly video – or a sponsored ad camouflaged to look like a recommended video – automatically plays.
Nagging	Asking repeatedly and disruptively if a user wants to take an action, or making a request that doesn’t let the user permanently decline – and then repeatedly prompting them with the request.	Asking users to provide their data or turn on cookies then repeatedly presenting the choices as “Yes” or “Not Now” instead of “Yes” or “No.”
Forced Registration or Enrollment	Making users create an account or share their information to complete a task.	“Create an account to continue with your purchase”
Pay-to-Play or Grinding	Saying that things are available with a purchase or download, but then charging users to actually obtain those things, or making the free version of a game so cumbersome and labor-intensive that the player is induced to unlock new features with in-app purchases.	
Friend Spam, Social Pyramid Schemes, and Address Book Leeching	Asking for an email address or social media permissions for one purpose but then using it for another, or making users share information about people in their social network.	

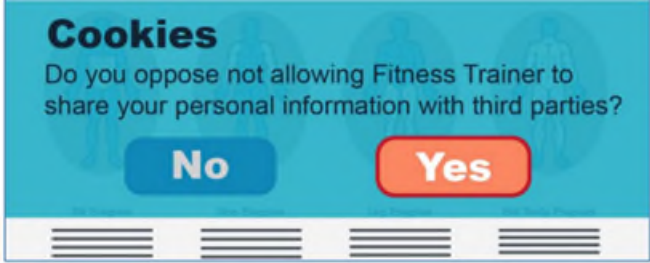
NAD #6436 (Quicken Loans)

- NAD reviewed the claim “NO REGISTRATION, NO LOGIN” in advertising for mortgage re-financing products.
- NAD noted that the site did in fact require consumers to submit various types of personal information to get rate info. NAD also noted that Quicken Loans’ privacy policy indicates that they collect and share site visitors’ personal data which, NAD determined, “contradicts the reasonable take away from the challenged claim that consumers’ personal information will not be shared with third parties.”
- Referred to the FTC because the advertiser did not submit a response.

Quicken Loans

Dark Pattern Type: Asymmetric Choice

FTC Examples

Type	Description	Example(s)
Trick Questions	Using ambiguity or confusing language – often double negatives – to steer a user to things they don’t want.	
Confirm Shaming	Using shame to steer users away from certain choices by framing the alternatives as a bad decision.	“No, I don’t want to save money”
Preselection	Preselecting a default that’s good for the company, but not the user.	Add-on products such as trip insurance or an extended warranty are automatically tacked on to a purchase unless the customer notices and opts out.
Subverting Privacy Preferences	Tricking users into sharing more information than they really intended to.	<p>Asking users to give consent but not informing them in a clear, understandable way what they are agreeing to share.</p> <p>Telling users the site is collecting their information for one purpose but then sharing it with others or using it for other purposes.</p> <p>Including default settings that maximize data collection and making it difficult for users to find and change them.</p>

FTC v. Amazon

Dark patterns include:

- forcing consumers to choose whether to enroll in Prime
- hidden terms and conditions
- option to decline enrollment difficult to locate
- asymmetric choices
- cancellation process designed to deter consumers from unsubscribing

