

Dear sir,

We are writing to you to offer our inputs on the consultation paper on “Guidelines for Prevention and Regulation of Dark Patterns” on which comments have been invited till October 05, 2023.

We are independent designers and technologists based out of Bangalore who care deeply about consumer rights in India. We've been concerned at the proliferation of Dark Patterns across the Indian ecosystem, especially in the Fintech, E-Commerce, and Gaming industries. We have combined experience of 20+ years in the Indian startup industry, and offer our suggestions independently to help uplift the ecosystem.

We would like to thank the Department of Consumer Affairs for initiating this consultation process. Indian consumers have faced great losses due to the usage of such dark patterns, and it is the right step from the department to stop their use.

We conducted a survey of various Indian services, alongside a review of existing dark patterns specified by regulators elsewhere. Our submission is the result of this work, that proposes:

1. Specifying additional Dark Patterns that are prominent in the Indian ecosystem.
2. Providing clarity on a few Dark Patterns, either via better examples, or by expanding the explanation.

Missing Dark Patterns

Our survey resulted in the following dark patterns being abused in the Indian ecosystem, and suggest adding them to the specified list.

Obstruction

While a few sub-categories of the Obstruction Dark Pattern are specified (Subscription Trap), Obstruction in general is used by various applications to **force users towards certain behavior** by many platforms and services.

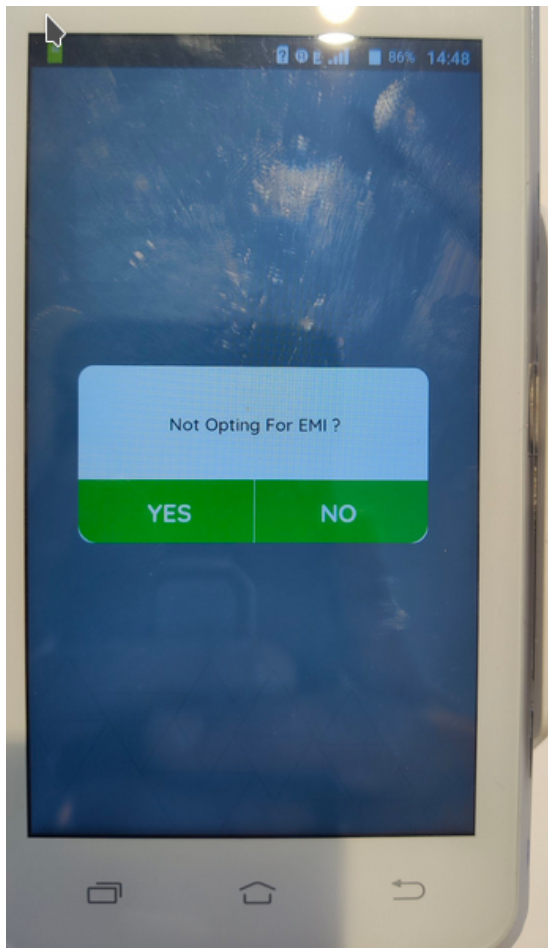
A few examples:

1. **“Pay to Skip”**: Mobile Games will often have an artificial timer to stop players from making progress in the game. By putting an artificial barrier to progress, users are forced to pick a second alternative: pay to skip the timer.
2. Facebook used an obstruction technique by making it **easy to agree to privacy-invading settings but difficult to reject them**. Facebook's interface had a button to “accept and continue” with just one click, but to reject the settings, the user had to click an unclear button and toggle a switch to the left. This made it confusing for users, and they couldn't be sure if they successfully protected their privacy. See [deceptive.design/types/obstruction](#) for more details.

3. **Immortal Accounts.** In the absence of a Privacy Law until recently, service providers in India have never supported Account Deletions well enough.

Trick Wording

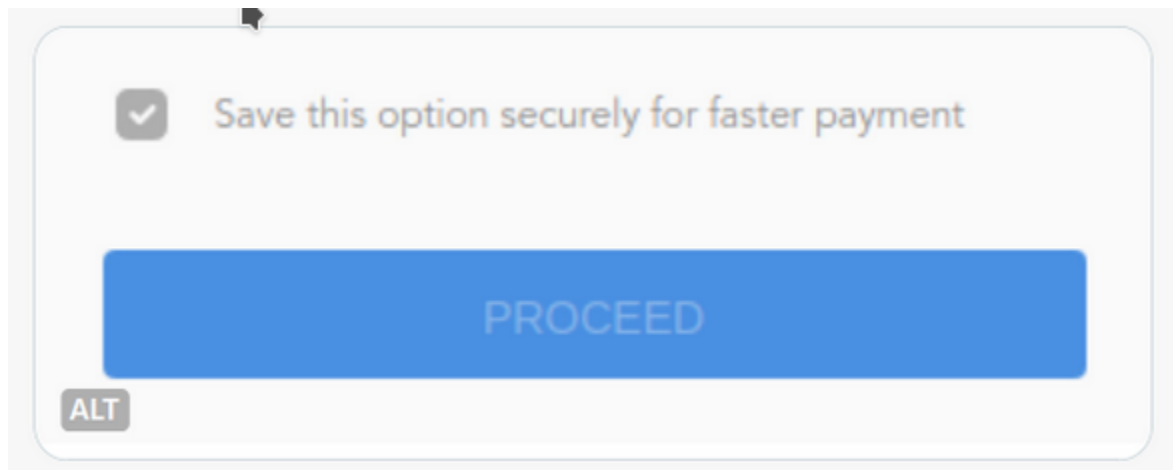
Trick Wording **uses ambiguous language to mislead users into** specific actions. An example below comes from a PoS vendor in India, which uses trick wording to deceive users into signing up for an EMI.



Preselection

Preselecting is a dark pattern, where the User Interface **preselects a default that is good for the company, but not for the user**. This is similar to the Forced Action dark pattern, but deals with the “default value” of the option, typically a checkbox. In the Indian context, it is often seen as a “Clubbing” dark pattern, where 2 separate options will be clubbed into a single item that forces you via a Pre-selection to a misleading choice. As an example, PayU India uses a pre-selected checkbox to save your card in this screenshot from 2021:

Notably, it also uses the “Interface Interference” dark pattern to grey the checkbox to make it appear like a disabled checkbox to **mislead the user into believing they don’t have a choice** here.



Login or Create an Account
Pay using UPI, Wallet, Bank Accounts and Cards

+91 Enter Mobile Number

[Need Help?](#)

☒ Get updates on Whatsapp. I authorize Paytm to access my credit reports from [bureaus](#).

Proceed Securely

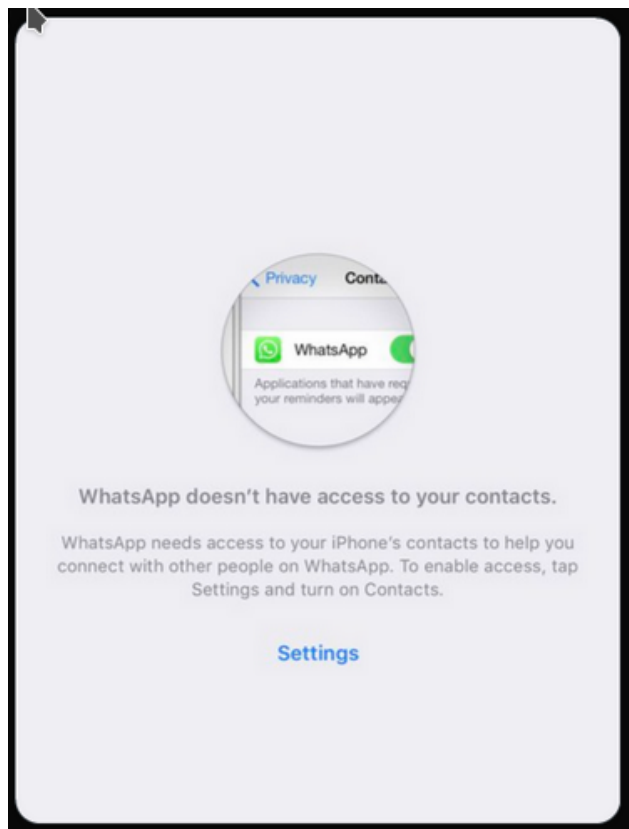
In this second screenshot, Paytm pre-selects and clubs two consents into a single one: Consent to message the user on WhatsApp, and consent for Paytm to access the user’s credit reports. By clubbing both of them, this **becomes a combination of the forced action and pre-selection dark patterns**.

Friend Spam, and Social Dark Patterns

Social Dark patterns take a few different forms:

1. Asking for a user's email access, and using it to spam their contact list for **inviting their friends without user consent**. LinkedIn has used this dark pattern excessively in the past, and companies reliant on referral schemes in India continue doing the same.
2. **Forcing users to share information about people in their Social Network**. Common examples of this are WhatsApp and TrueCaller, which refuse to function without the user's contact list being shared with the service.
3. Social Pyramid Schemes, where the game or app gives you a **bonus for inviting your friends and then they have to invite their friends**.

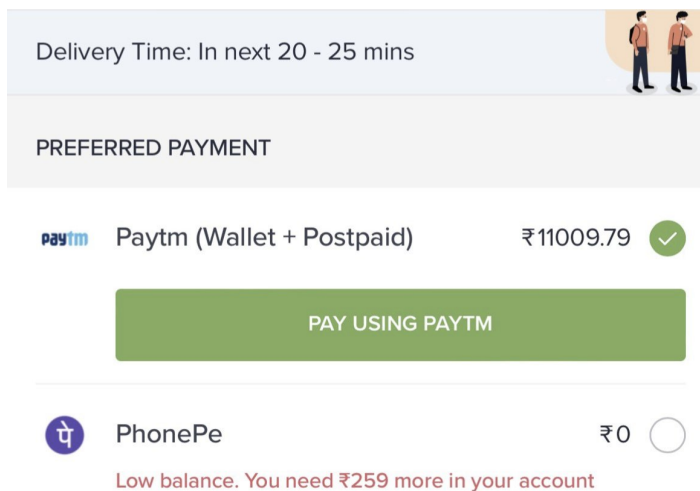
Here's a screenshot from WhatsApp for example:



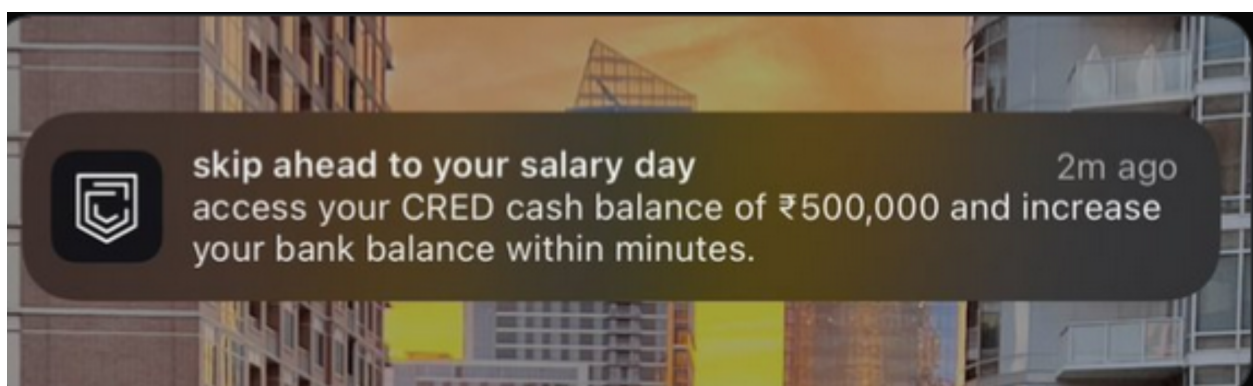
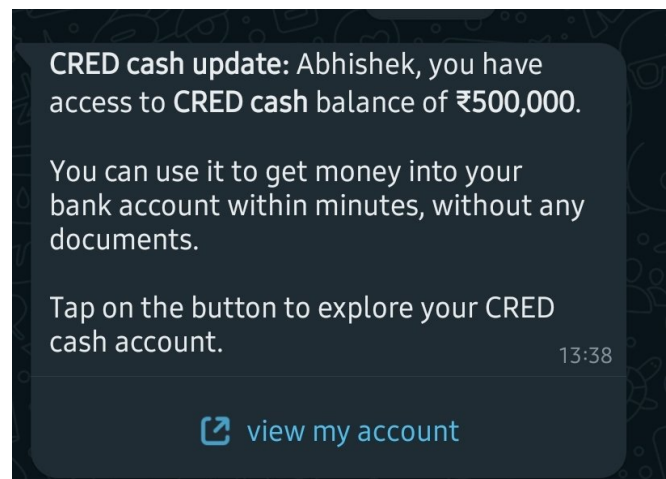
Hidden Information

The Hidden Information dark pattern is defined as “**Hiding material information or significant product limitations from people**”. A few examples from the Indian context:

1. Paytm provides a unified view of their Wallet+Postpaid product while making transactions. The UX is designed to **trick the user into signing up for a loan**, and the interface does not clarify whether the transaction amount is being debited from the wallet, or from the loan account.

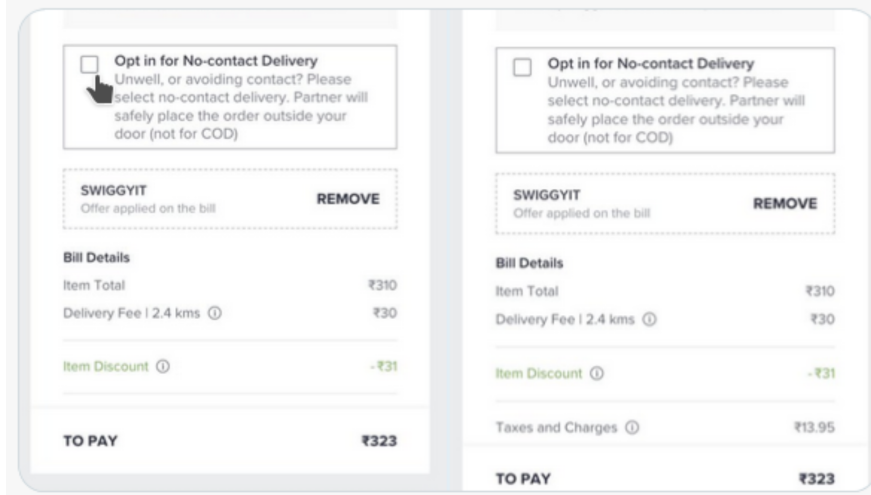


2. CRED sends out notifications over mobile, and SMS mentioning the user's "CRED Cash Balance", which in reality is the sanctioned loan limit for the user. By hiding important information about this product (that this is a loan), CRED **tricks users into signing up for a loan**.



3. E-Commerce applications **hide various charges behind a few extra clicks**, behind a well-designed scroll to hide critical information about taxes from users.

Dark pattern on the @Swiggy site... deliberately hiding the Taxes and Charges line item in a totally unnecessary scroll bar. If I hadn't noticed the price difference in the final bill, I'd have missed this completely.



Loot Box

Loot Boxes are a common dark pattern in addictive applications (mobile games, real-money gaming companies), where players use money or the in-game currency to purchase a “box”, which provides a random chance of getting an item on opening. The value/quality of items in the box are variable, with more valuable items having a lesser chance.

Such randomization **triggers addictive loops in these apps, resulting in players trying over and over again to get the item that they want.** This is similar in behavior to casino slot machines, but without any regulations.

Loot boxes are already widely being regulated by advertising/gaming/gambling/consumer regulators worldwide. See <https://lordslibrary.parliament.uk/loot-boxes-in-computer-games-are-they-a-form-of-gambling/> for example.

Clarifications in Specified Dark Patterns

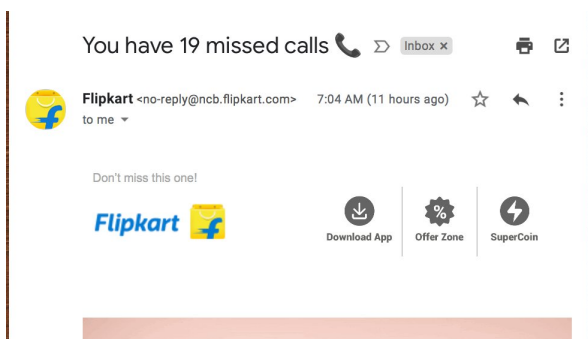
The current list of Dark Patterns specified in the Draft Guidelines is a great start, but as we spent time looking at our survey results of how dark patterns are being used in India currently, we felt that many of these will either be hard to enforce, or remain ambiguous and thus prevalent in the industry as per the current wording of the guidelines.

Our suggestions are mainly around **clarifying a few of the dark patterns with a few additional examples, or clearing up the wording to reduce ambiguity in text.**

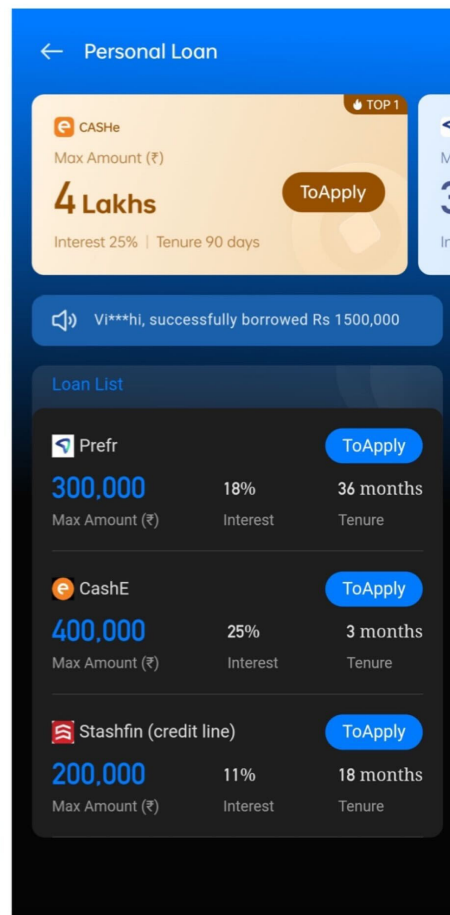
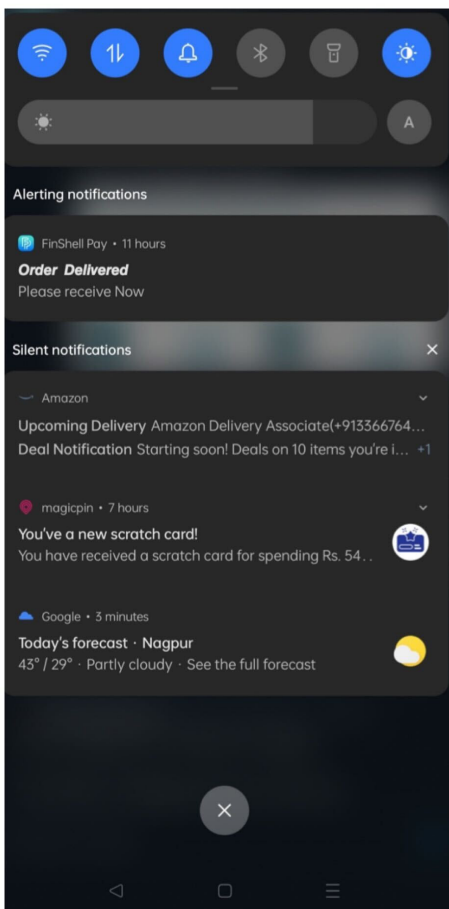
False Urgency

We recommend adding a third point to the list, to include “False Discount Claims” under this section. E-Commerce websites in India will often show an artificial inflated price and then discount it by a huge margin to make it appear that the item is on a discount. While in reality, the item was never sold on such an inflated price.

False Activity Message: It is a common tactic by Indian startups (attached below) to **share emails with false titles, or app notifications with false premise** to get users to engage with the app. This should also be clarified and included as a dark pattern.

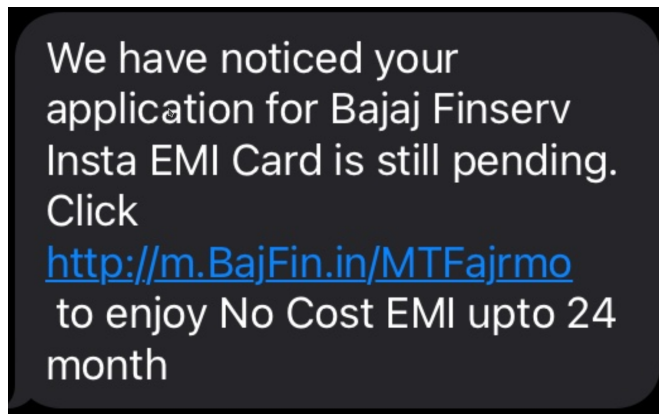


One example is flipkart, where emails would use a subject like: “You have 19 missed calls” to create a false sense of urgency. Another example is default system notifications on Oppo Phones which mislead people about missed calls or deliveries they’d received. Users clicking on such notifications find themselves inside a loan app.



As an alternative, illustrations on such misleading notifications could be included under “Bait & Switch” dark pattern.

Another suggestion would be to rename the category from “False Urgency” to “**False Belief**” to account for the variety of Dark Patterns that rely on non-urgent behavior change. An example of this is the following SMS screenshot from Bajaj Finance:




The SMS text introduces a false belief that the consumer has applied for an Insta EMI Card, and that their application is pending.

Basket Sneaking

Basket Sneaking is currently defined as **inclusion of additional items without consent of the user**. Some companies make the sneaked item non removable, or if it is removed the basket items the user intended to purchase are also removed. (see the below example of Flipkart with Byju's courses, which are non-removable).

Since this is a complementary item (discounted to 0 INR), it will be allowed in the exceptions under the current guidelines. However, users not wanting this additional purchase have no option.

The current exception should be reworded to enforce the “removability of any such complementary products” for the exception to be valid.




Children of Time
English, Paperback, Tchaikovsky Adrian

Seller:Global Retail Ventures

₹625 **₹395** 36% Off 3 offers applied ⓘ

Delivery by Mon Jul 25 | ₹49



BYJU'S Classes Bootcamp of 1 Live Online Tuition Class for All Standards, All Boards (CBSE, ICSC, State Board), Maths & Science Topics (Voucher) (E-Learning) School Course

₹0 ~~₹399~~ **FREE**

- This item is added to your cart as part of a free giveaway. Read more details in the order details page.

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SAVE FOR LATER

REMOVE

Interface Interference

Interface Interference is defined as a design element that manipulates the user interface in ways that (a) highlights certain specific information; and (b) obscures other relevant information relative to the other information; *to misdirect a user from taking an action desired by her.*

We argue we should also expand the definition to include **prompts that direct users to take certain actions should also be labeled as a dark pattern**. Here below on the left is an example of Amazon that shows the default as EMI, encouraging a user to take an EMI, instead of showing the option to purchase the entire object at once.

In the middle, the ICICI bank hides the insurance purchase as a terms and condition for the fund transfer. The **user would get deceived into thinking the checkbox is also a part of the transfer**, when it is not. The checkbox is also small size text in a low contrast color scheme making it harder to read.

On the right, there is an example from PayTM where it **pre-selects an option and encourages the user to pay more to buy refundable tickets, obscuring the fact that the refundable ticket costs more**. Again they have a low contrast typeface making it harder to read.

Samsung 236 L 3 Star Digital Inverter Frost Free Double Door Refrigerator (RT28C3053S8/HL, Silver, Elegant Inox, 2023 Model)

Amazon's Choice for "samsung refrigerator double door"

Style Name: 2023 3 Star

2022 3 Star	2023 3 Star
Currently unavailable.	₹25,990.00 ✓prime In stock

₹4,332 /month (6 months)
with No Cost EMI on your Amazon Pay ICICI Credit Card All EMI Plans
-32% ₹25,990
M.R.P.: ₹37,990
✓prime
Inclusive of all taxes

21:30 11%

Fund Transfer

Remarks
Type your own (optional)
Please enter remarks

From
Savings Account Available Balance

Group Term Plan : Avail a life cover of Rs. 200000 at monthly premium of just Rs. 35

☐ I have read the T&C and hereby provide my consent to ICICIBank for monthly standing instruction activation from my selected bank account towards the premium payment of Rs. 35 per month. I confirm that I have not been hospitalized in the last 5 years or have suffered or suffer from diabetes, heart disease, cancer, HIV, AIDS or any major medical illness which requires regular follow up or treatment. I also confirm that nominee for this insurance cover will be same as updated in my linked bank account.

Proceed

Search 2:21 PM

Care to Add Food Combo's?

₹533
Couple Combo (1 Large Popcorn (salted) + 2 Regular Pepsi)
Add Item

Firangi | Hindi
Fri, 01 Dec, 09:20 PM
PVR Mega Mall Gurgaon
2 Seats Selected

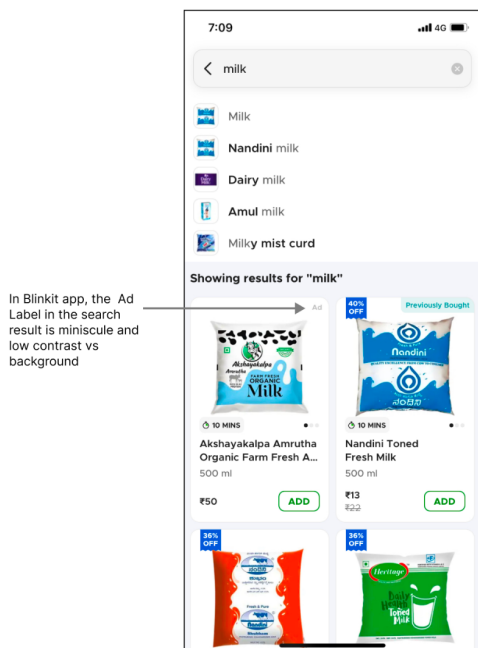
☒ 100% Refund on Cancellation
Full refund of ticket price if you cancel upto 3 hrs. prior to show time at just Rs. 49/ticket
Terms & Conditions

₹ 350 x 2 Tickets ₹ 700
Proceed to Pay ₹ 857

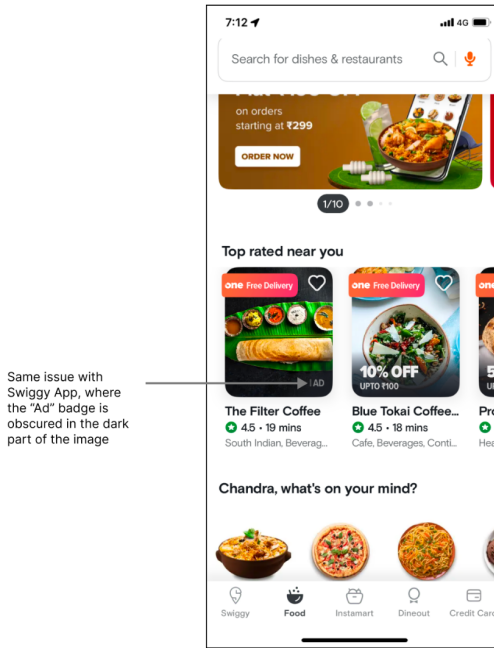
Disguised Advertisement

In the proposed guideline, the platforms that host a list of products / services / service providers such as e-commerce and food delivery, either as part of their offering or in their search results, should **explicitly be mentioned as coming under the policy of disguised advertisement**.

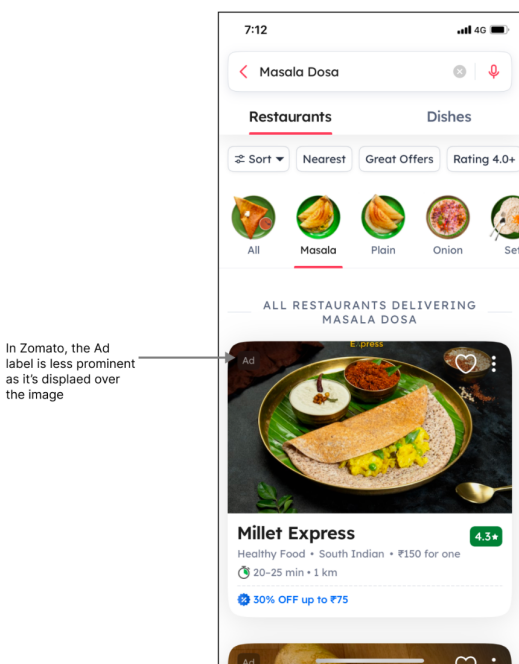
In an example of swiggy and blinkit, ads are shown all over the search results and home page, but the ad is not clearly distinguished from surrounding content. **The ad is easy to miss by users.** Ideally the listing which is an ad should be explicitly and clearly displayed that it is an ad to users, in a format that is legible and prominent. Further the ad label should be persistent and not vanish (it vanishes in zomato after a while).



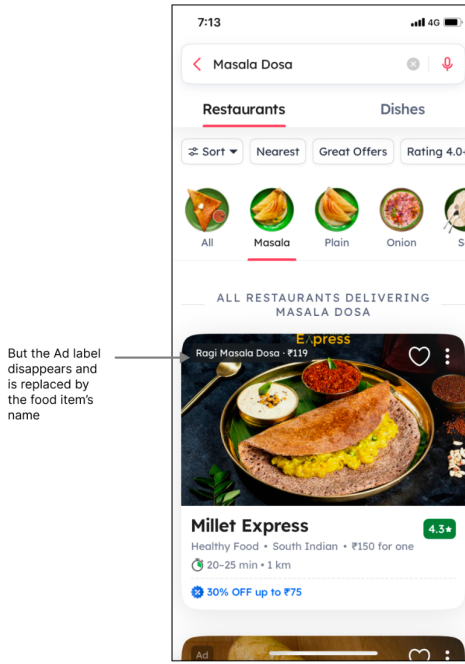
In Blinkit app, the Ad Label in the search result is miniscule and low contrast vs background



Same issue with Swiggy App, where the "Ad" badge is obscured in the dark part of the image



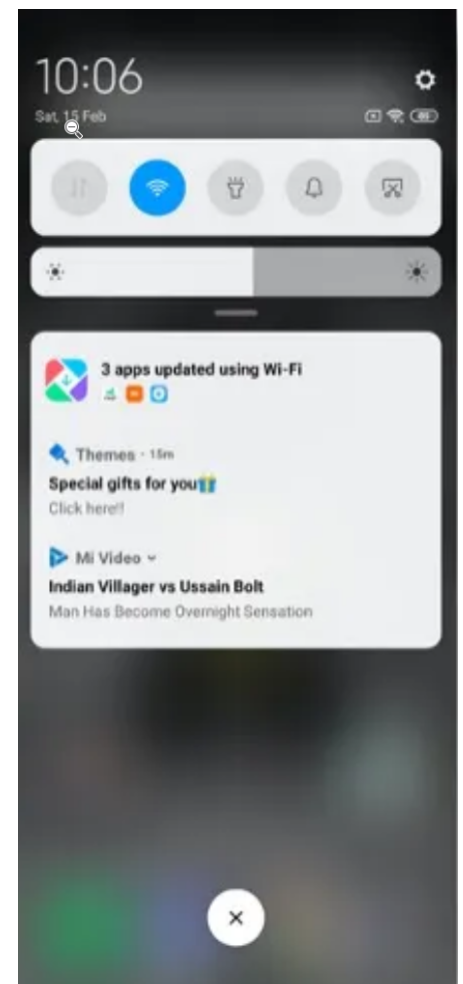
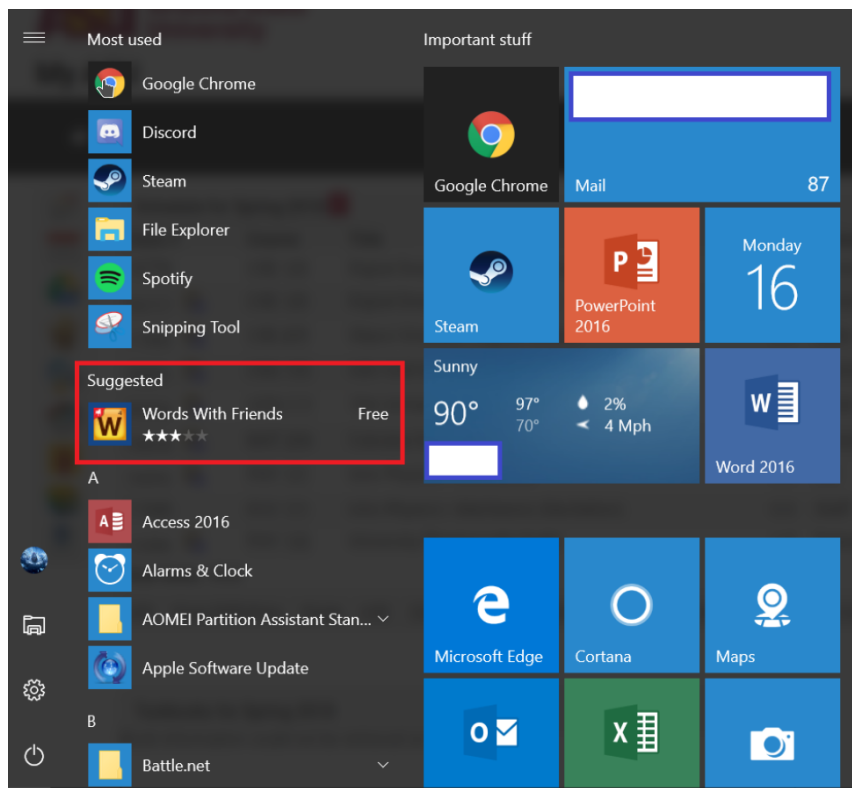
In Zomato, the Ad label is less prominent as it's displayed over the image



But the Ad label disappears and is replaced by the food item's name

Finally for disguised ads, some operating systems **show ads disguised as notifications or system interface to users**. Xiaomi and Microsoft Windows are examples of the same. See the following screenshots:

While these are clear examples of disguised ads, it is unclear if the current guidelines will apply here, since those are limited in scope to Platform, Advertiser, and Seller, and it is ambiguous where Operating Systems Vendors (Xiaomi/Microsoft) would fall under this. Our suggestion would be to provide a clarification in scope for “Platform” in the guidelines, to ensure that operating systems are covered in the definition of Platform as per Consumer Protection (E-Commerce) Rules, 2020.



References

Our work is primarily informed by the following sources:

1. [FTC Report on Dark Patterns](#)
2. [Deceptive.Design](#) website documenting case law, regulations, and examples of Dark Patterns.
3. [DarkPattern.games](#), a website documenting and rating games alongside their Dark Patterns.

References for our various screenshots are available at <https://tinyurl.com/4m4v5uaa>

Once again, we thank the Ministry of Consumer Affairs for bringing forth this consultation, and hope these guidelines will put an end to the use of such dark patterns in misleading consumers across India.

Thank You,
Abhay Rana
Joy Bhattacharjee
N Chandrasekhar Ramanujan