



Attorney General Raoul Urges The Federal Trade Commission To Address Deceptive “Dark Patterns” In Digital Advertising

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CHICAGO - Illinois Attorney General Kwame Raoul and Iowa Attorney General Tom Miller today led a coalition of 17 attorneys general in calling on the Federal Trade Commission (FTC) to strengthen and update its guidance on digital advertising disclosures. In particular, Raoul and the states recommend improvements to address the emergence of deceptive design tactics known as “dark patterns” in the online and digital marketplace.

On June 3, 2022, the FTC [issued a request for information and public comment](#) to revise, update and modernize its business guidance titled “[.com Disclosures: How to Make Effective Disclosures in Digital Advertising](#).” The guide was first published in 2013 to help businesses create and publish advertisements and disclosures that comply with federal law and are clear and transparent, so consumers can make informed choices.

Since 2013, the digital marketplace has radically changed. Smartphones and mobile devices are ubiquitous, and social media networks are a primary venue for businesses to advertise their products. Many consumers purchase goods through online marketplace platforms that host an assortment of third-party sellers. Far too often, attorneys general have observed that unscrupulous businesses are utilizing manipulative and deceptive means to target their intended customers.

“Some unscrupulous online retailers deliberately design their platforms to confuse consumers into making purchases or signing up for subscriptions they do not want,” Raoul said. “I am calling on the Federal Trade Commission to address these deceptive tactics, known as dark patterns, when the commission updates its guidance for businesses.”

The term “dark patterns” was initially used to refer to “tricks in websites and apps that make you do things that you didn’t mean to, like buying or signing up for something.” Dark patterns come in a variety of forms. “Confirmshaming” involves attempts to guilt or shame the user into making a certain selection. “Obstruction” makes the user jump through unnecessary hoops to reject a service, such as making it difficult to cancel a subscription plan. “Trick questions” use intentionally confusing prompts. The overall impact is that consumers are steered toward making selections, and often making expensive financial decisions, that they would not have made otherwise.

[In their letter](#), Raoul and the coalition seek to provide information to inform the FTC’s efforts to update the guide. The letter provides an overview of academic research on dark patterns, as well as existing and proposed state, federal and international legislation that attempt to define dark patterns. The letter also illustrates types of dark patterns and explains how they may harm consumers in everyday transactions.

In addition to making recommendations concerning dark patterns, Raoul and the coalition encourage the FTC to consider updates regarding the use of hyperlinks that require a consumer to visit multiple pages to view material disclosures. The coalition also asks that the FTC makes clearer what guidance applies to multiparty selling platforms and provides expanded direction on using plain language. Additionally, the coalition recommends making the guide available in a user-friendly, web or mobile format.

Joining Attorneys General Raoul and Miller are the attorneys general of Alaska, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, and Wisconsin, as well as Hawaii’s Office of Consumer Protection.