UNITED STATES OF AMERICA
Federal Trade Commission

Office of Commissioner
Rohit Chopra

STATEMENT OF COMMISSIONER ROHIT CHOPRA

Regarding Dark Patterns in the Matter of Age of Learning, Inc.
Commission File Number 1723186
September 2, 2020

Today, the Commission finalizes an important action against Age of Learning, which operates the ABCmouse subscription service for young children's educational content. At a time when many parents are looking for more opportunities for educational enrichment online, it is disappointing that services like ABCmouse have scammed millions of dollars from families through dark patterns, as alleged in the Commission's complaint. By making it extremely difficult to cancel recurring subscription fees, ABCmouse engaged in conduct that was not only unethical, but also illegal.

Dark Patterns Trick and Trap Users by Design

Dark patterns are design features used to deceive, steer, or manipulate users into behavior that is profitable for an online service, but often harmful to users or contrary to their intent. Since Harry Brignull first coined the phrase in 2010, researchers have identified a wide variety of dark patterns – each one aimed at a nefarious outcome that almost certainly could not be achieved without deception.[1]

Dark patterns are the online successor to decades of dirty dealing in direct mail marketing.[2] Scams by mail have never gone away, but they have been eclipsed by digital deception, often using dark patterns. But, because dark patterns are not limited by physical constraints and costs, these digital tricks and traps pose an even bigger menace than their paper precursors.

Typically, digital tricks and traps work in concert, and dark patterns often employ a wide array of both. Dark pattern tricks involve an online sleight of hand using visual misdirection, confusing language, hidden alternatives, or fake urgency to steer people toward or away from certain choices. This could include using buttons with the same style but different language, a checkbox with double negative language, disguised ads, or time pressure designed to dupe users into clicking, subscribing, consenting, or buying.

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[1] The Nerdwriter produced a helpful video highlighting Brignull's work and showing examples of dark patterns used by Amazon.com, LinkedIn, Booking.com, and other companies. Nerdwriter1, *How Dark Patterns Trick You Online*, YOUTUBE (Mar. 28, 2018), https://www.youtube.com/watch?v=kxkrdLI6e6M.

[2] For example, for many years, record labels relied on often deceptive negative option marketing to sell music, a precursor to digital scams. *See* Tien Tzuo, *Columbia House of Horrors: How Not to Run a Subscription Business*, VOX (Apr. 7, 2016), https://www.vox.com/2016/4/7/11585924/columbia-house-of-horrors-how-not-to-run-a-subscription-business.

Dark pattern traps use technology and design to create a situation Brignull has described as a "roach motel," where it is easy to get in, but almost impossible to escape. These digital traps can come in the form of forced continuity programs that make it difficult to cancel charges, trick questions to frustrate user choice, or through free trials that automatically convert into paid memberships.

The ABCmouse Roach Motel

ABCmouse was undoubtedly a roach motel. Through the dark patterns detailed in the FTC's complaint, ABCmouse deployed tricks to lure families into signing up for its service, and traps to prevent them from cancelling. First, ABCmouse tricked consumers with a "12-month" membership offer, without disclosing that this membership would automatically renew. Instead, the company buried this information in its "Terms and Conditions," which were accessible only if users clicked a hyperlink. Even those families that did click the link would have struggled to learn the truth, which was concealed in small, dense text. Unsurprisingly, these problematic practices prompted tens of thousands of families to file complaints.[3]

Instead of fixing the user experience, ABCmouse doubled down on deception by deploying a host of mazes and obstacles to prevent families from cancelling their membership. As detailed in the Commission's complaint, the company made it difficult for families to know where to start the process by deeply burying the link to the cancellation path, and by frequently refusing to honor cancellation requests initiated through their Customer Support portal or over the phone.[4] Then, families who tried to cancel through the website were forced to click through a labyrinth of pages urging them not to cancel. In addition to wasting families' time, these pages were riddled with traps – ambiguous menu options that in some cases *re-enrolled* members if they clicked the wrong button.[5]

When families complained, ABCmouse responded by making the site even more deceptive. For example, the Commission's complaint details how in 2017, ABCmouse changed its site to make the already-buried "Cancellation Policy" link less prominent. The trick worked, with the company's Senior Design Director reporting that more families were abandoning their efforts to cancel.[6]

ABCmouse's tactics are not unique. Dark patterns exist across the internet. Online services employ user experience designers who optimize design to ensure that sign-up flows are easy. But, the seedier side of the user experience designer's job is to frustrate users when it comes to ending a subscription or deleting an account, or by deceiving users directly.

For example, Uber reportedly used "ghost cars" to give customers the false impression that they would not need to wait long for an available ride – harming both their riders and their competitors.[7] Companies have also used dark patterns to manipulate users about privacy settings.

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[3] Compl. ¶¶ 9-19.
[4] Compl. ¶¶ 21-26.
[5] Compl. ¶¶ 27-39.
[6] Compl. ¶¶ 42-44. This followed earlier efforts to add *additional* steps to the already labyrinthine cancellation process. *Id.*
[7] *See* Kate Knibbs, *Uber Is Faking Us Out With "Ghost Cabs" on Its Passenger Map*, GIZMODO (Jul. 28, 2015), https://gizmodo.com/uber-is-faking-us-out-with-ghost-cabs-on-its-passenge-1720576619.

Analyses by the Norwegian Consumer Council and Consumer Reports put a spotlight on dark patterns used by Microsoft, Google, and Facebook that appear to trick users into sharing more of their personal data.[8] Researchers have even identified a set of players that offer dark patterns as a turnkey solution to online operators.[9]

Combatting Unlawful Dark Patterns

While you may not have heard of ABCmouse before, we've all been subject to companies deploying dark patterns to dupe us. From making ads look like organic search results to creating a maze of "privacy" settings so complex that their own engineers and employees can't crack the code, these companies know that dark patterns can drive profit. In a culture that responds to systemic failures with "buyer beware," it's no surprise that searches for "accidental sign up" uncover scores of people asking for help after being forced into a premium product they did not want. We must change this calculation.

The Federal Trade Commission has numerous tools to root out the kinds of tricks and traps we saw in this matter. For example, the Restore Online Shoppers' Confidence Act requires clear and conspicuous disclosures of key terms and "simple mechanisms" to stop recurring charges – requirements that, in my view, ABCmouse clearly violated.[10] Similarly, the CAN-SPAM Act prohibits deceptive header information, and requires marketers to provide email recipients a simple way to opt out of future emails.[11] Additionally, the FTC Act itself prohibits unfair and deceptive practices, and vests the Commission with authority to analyze emerging practices and define which practices are unlawful.

Digital deception should not be a viable American business model. If the Federal Trade Commission aspires to be a credible watchdog of digital markets, the agency must deploy these tools to go after large firms that make millions, or even billions, through tricking and trapping users through dark patterns. We cannot replicate the whack-a-mole strategy that we have pursued on pressing issues like fake reviews, digital disinformation, and data protection.[12] Instead, we need to methodically use all of our tools to shine a light on unlawful digital dark patterns, and we need to contain the spread of this popular, profitable, and problematic business practice.

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[8] *See* Katie McInnis & Gabrielle Rothschild, *CU Letter to FTC on Norwegian Consumer Council Report "Deceived by Design" and CU Research on Facebook and Google Sign-Up*, CONSUMER REPORTS (Jun. 27, 2018), https://advocacy.consumerreports.org/research/letter-to-ftc-norwegian-consumer-council-report-deceived-by-design/.

[9] *See* Arunesh Mathur et al., DARK PATTERNS AT SCALE: FINDINGS FROM A CRAWL OF 11K SHOPPING WEBSITES, PROC. ACM HUM.-COMPUT. INTERACT., VOL. 3, NO. CSCW, ARTICLE 81 (Sep. 20, 2019), https://arxiv.org/pdf/1907.07032.pdf.

[10] 15 U.S.C. §§ 8401–05.

[11] 15 U.S.C. § 7704(a).

[12] *See, e.g.,* Rohit Chopra, Commissioner, Fed. Trade Comm'n, Statement of Commissioner Rohit Chopra Joined by Commissioner Rebecca Kelly Slaughter In the Matter of Sunday Riley, Fed. Trade Comm'n File No. 1923008 (Oct. 21, 2019), https://www.ftc.gov/public-statements/2019/10/statement-commissioner-chopra-joined-commissioner-slaughter-regarding.