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June 2024

FTC 'Dark Patterns' Lawsuit Against Amazon Progresses

By: Terese L. Arenth

A federal judge in Seattle has ruled against Amazon in its bid to have a Federal Trade Commission (FTC) lawsuit dismissed that alleges the online retailer used deceptive "dark patterns" practices to enroll customers in Prime subscriptions.

"Viewing the Amended Complaint in the light most favorable to the FTC, the Court concludes that the allegations sufficiently indicate that Amazon had actual or constructive knowledge that its Prime sign-up and cancellation flows were misleading consumers," U.S. District Judge John Chun wrote May 28 in denying the motion to dismiss.

As a result, the case will go to trial unless it is settled out of court. The trial was originally scheduled for February 2025 in the U.S. District Court for the Western District of Washington, with Amazon and three of its officers listed as defendants. However, amidst accusations by the FTC that Amazon delayed discovery production, the trial has been rescheduled for June 2025.

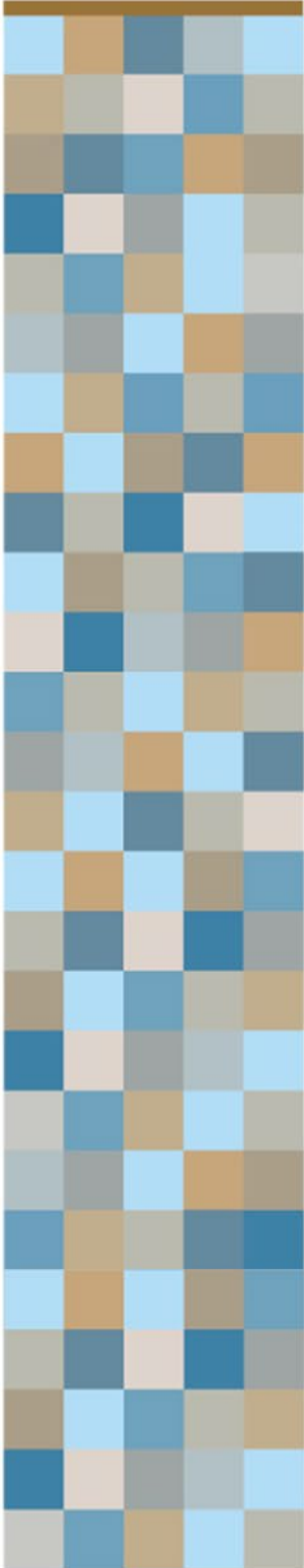
So, what exactly are dark patterns? They are design practices in online advertising and marketing that trick or manipulate consumers into making choices they would not otherwise have made and that may cause them harm. This topic was discussed in my two prior alerts in 2023: [FTC Targets Amazon In Crackdown On 'Dark Patterns' Marketing Tactics](#) and [Publishers Clearing House: A Cautionary Tale on the Risks of 'Dark Patterns' Marketing](#).

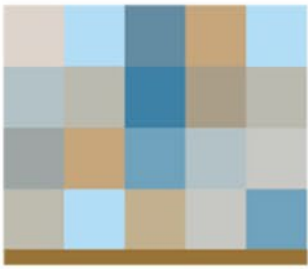
Other companies the FTC has targeted with lawsuits alleging dark patterns practices include Vonage, Epic Games, Credit Karma, and Doxo, a bill payment company.

Dark Patterns Practices

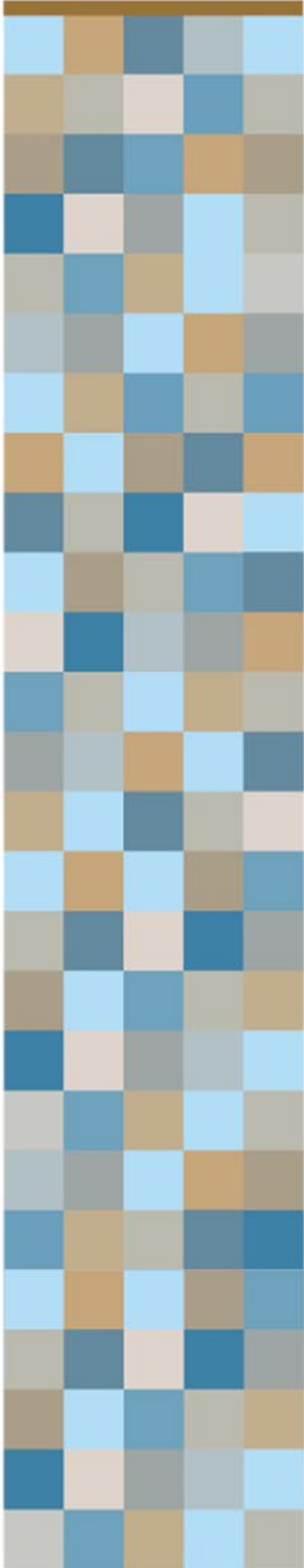
An FTC workshop on the topic in 2021 and subsequent 2022 report provided a number of examples of dark patterns practices that can deceive consumers into making choices they didn't intend to make and could do them harm. Examples include:

- Disclosures that are difficult to read or to locate





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- Online buttons labeled “next” that instantly process a transaction when clicked instead of moving consumers to the next screen
- Showing only part of a product’s total price at first and delaying mention of other charges until later (a practice known as “drip pricing”)
- Offering consumers pre-checked boxes indicating their choices, rather than boxes they affirmatively check themselves
- Unclear cancellation policies
- Ads that look like independent news stories, but aren’t
- Reviews that appear to be unbiased but are actually biased comparisons

Citing research that shows such practices can significantly influence consumer behavior, the FTC’s report noted the agency would take action whenever practices were deemed as violating the FTC Act, the Restore Online Shoppers’ Confidence Act (ROSCA) or other statutes and regulations enforced by the agency.

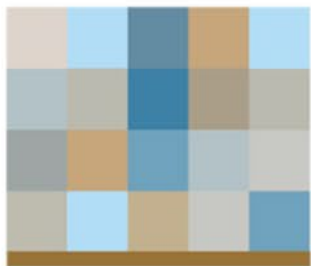
Specific Allegations

In Amazon’s case, the FTC contends the company violated the FTC Act and ROSCA. The lawsuit alleges that customers were presented Prime subscription enrollment options a number of times during the online checkout process when buying products and, according to the complaint, “(i)n many cases, the option to purchase items on Amazon without subscribing to Prime was more difficult for consumers to locate. In some cases, the button presented to consumers to complete their transaction did not clearly state that in choosing that option they were also agreeing to join Prime for a recurring subscription.”

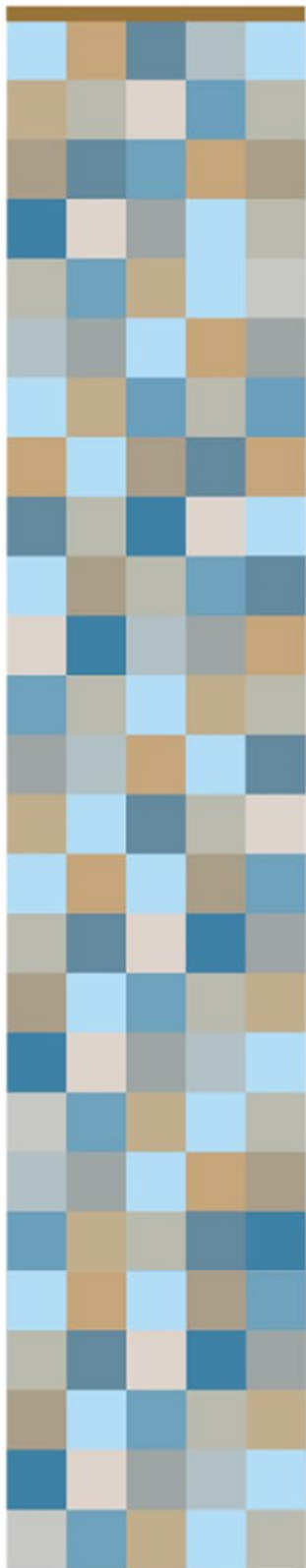
The FTC lawsuit also cites Amazon for presenting customers with an overly complicated process for cancelling Prime subscriptions.

Interestingly, Arizona has also taken issue with Amazon Prime practices in one of two lawsuits that the state’s attorney general filed against the online retailer in May. The Prime lawsuit contends that Amazon, until recently, used a “layered and confusing cancellation process” that relied on dark patterns to manipulate consumer choices.

In the case of Publishers Clearing House, the FTC in 2023 accused the company of a number of dark patterns practices, including the use of statements and user interfaces that could make consumers believe they had to order products before entering sweepstakes, or that ordering improved their chance of winning. The FTC announced soon after filing suit that the sweepstakes company had agreed to pay the agency \$18.5 million for consumer refunds, and to make “substantial changes” to its online business practices, in order to comply with the proposed court order.



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