CONSUMER PROTECTION AGAINST DARK PATTERNSON BUSINESS PLATFORMS: AN INTERPRETATION UNDER THE CONSUMER PROTECTION ACT B.E. 2522 (1979)

[1]PONGKONGSAKPETCHAWUT, [2]NICHAKORN KHONTHONG, [3]SURASAK MEEBUA

[1]Undergraduate student, Bachelor of Laws Program, Faculty of Law, SuanSunandhaRajabhat University
[2]Lecturer, Faculty of Law, SuanSunandhaRajabhat University
[3]Lecturer, Faculty of Law, SuanSunandhaRajabhat University
E-mail:[1]s65123484002@ssru.ac.th,[2]nichakorn.kh@ssru.ac.th,[3]surasak.mee@ssru.ac.th

Abstract: In today's digital age, technology plays a significant role in human lifestyles, making everyday activities more convenient. Social media, e-commerce platforms, and streaming services enable users to access information and services effortlessly, such as ordering food or booking movie tickets. Businesses in the digital era often employ strategic designs to influence consumer behavior to attract and retain users. However, some businesses utilize deceptive design strategies, known as "dark patterns," embedded in platforms or applications to manipulate users into making unintended decisions or acting against their best interests. Users may often be unaware that they are being subtly guided or influenced. For instance, platforms may present terms and conditions as lengthy, multi-paragraph texts. This article focuses on three main objectives: (1) to study how dark patterns are designed to deceive consumers, (2) to analyze how the Consumer Protection Act B.E. 2522 (1979) can address these deceptive practices, and (3) to propose solutions for better consumer protection and regulations against dark patterns. The term "consumer" under Section 3 of the Act is somewhat unclear, especially when deciding whether certain business strategies count as offers, or "inducements". The author suggests creating a clearer definition of "consumer" to address this ambiguity and recommends proactive measures by authorities to monitor and regulate business practices. Additionally, Thailand could adopt laws similar to the EU's **Digital Markets Act**, which bans dark patterns, promotes fair competition, and requires businesses to disclose details about their algorithms. These steps would help protect consumers and ensure a fairer digital marketplace.

I. INTRODUCTION

In the digital era, where online platforms and applications play a crucial role in people's daily lives, User Experience (UX) design has become a key factor influencing consumer or user decision-making. However, not all designs are solely intended for user convenience and satisfaction. Some strategies conceal hidden intentions, subtly guiding users toward decisions that may go against their best interests. These strategies are known as "Dark Patterns," or deceptive design tactics that manipulate user behavior. (Hereafter referred to as "Dark Patterns").[1]

These are design techniques used in websites and applications that deliberately deceive or manipulate users into making decisions they may not have intended to make. The primary goal is to increase sales, collect personal data, or encourage users to take actions that benefit the business.[2]As consumer behavior rapidly evolves, access to convenient digital channels—such as online shopping and service platforms—has significantly increased. The growing variety of Dark Patterns poses an increasing risk of consumer exploitation, leading to subpar products and services. Therefore, consumer protection plays a crucial role in ensuring user confidence. To safeguard consumers from these deceptive tactics, legal frameworks must be established or enhanced, such as the Consumer Protection Act B.E. 2522 (1979), which aims to protect consumer rights. This includes implementing measures for product and service safety and regulating the digital marketplace to prevent consumer exploitation. If consumer protection relies solely on interpretation, it may lead to ineffective oversight and enforcement. Additionally, relevant agencies should be able to handle complaints and assist consumers efficiently.

Characteristics and Types of Dark Patterns

Dark Patterns are deceptive design techniques that intentionally mislead users of websites or applications into taking actions they did not originally intend. These tactics are often employed to serve business interests by influencing consumer behavior. Key characteristics include the use of ambiguous language to create misunderstandings, psychological tactics such as urgency and scarcity to pressure users into making quick decisions, and hidden information where crucial choices are concealed or difficult to access.

Dark Patterns manifest in various forms, including those related to purchasing goods and services such as Sneak into Basket – Unwanted products or services are automatically added to a shopping cart, leading to unintended purchases if users fail to review their selections carefully. Price Comparison Prevention – Websites restrict or make it difficult for users to compare prices with competitors. Hidden Costs – Additional fees or charges are concealed until the final stage of a transaction. Countdown Timers – Creating a false sense of urgency by displaying time limits for purchasing a product or service, even when no actual restriction exists.

[1] Varela, A. (2024). **10 Dark patterns in UX design and how to avoid them.** ***Bejamas***. https://bejamas.com/blog/10-dark-patterns-in-ux-design.

[2] Adam Rendle. (2022). **What is a "dark pattern"? Why do they matter and how can they be avoided?.** https://www.taylorwessing.com/en/insights-and-events/insights/2022/12/what-is-a-dark-pattern

Dark Patterns are also used in subscription services and privacy settings such as Hidden Options – Cancellation buttons or unsubscribe options are deliberately obscured, Trick Questions – Confusing phrasing is used to mislead users into making unintended choices, and Privacy Zuckering – Users are tricked into sharing excessive personal information.

Lastly, deceptive design elements influence user interactions by making certain buttons or options visually dominant over more important ones. For example, using misleading colors—such as a red checkmark and a green cross—can create confusion and lead users to make unintended selections.

[3]Each type of Dark Pattern varies in complexity, potentially causing confusion or raising concerns about whether consumers are adequately protected when falling victim to these deceptive tactics.The issue of consumer protection for service users is governed by the Consumer Protection Act B.E. 2522 (1979), which provides legal oversight. According to Section 3 of the Act, the term *"consumer"* is defined as:

"A person who purchases or receives services from a business operator, or a person who has been offered or solicited by a business operator to purchase goods or receive services. This definition also includes individuals who use goods or receive services from a business operator lawfully, even if they are not the ones who directly pay for the goods or services."

[4]According to this section, the definition of a consumer requires an element of solicitation or persuasion leading to a purchasing decision. However, studies on certain types of Dark Patterns suggest that some deceptive practices may not fit within the legal definition of *"consumer."* This is because they do not necessarily involve a direct offer or solicitation from a business operator. Additionally, the level of risk varies depending on the degree of persuasion or manipulation involved. This presents a legal gap that must be addressed to prevent consumer harm and ensure comprehensive protection.

Interpretation of "Consumer" in Relation to Dark Patterns Under Thai and International Law

Under Section 3 of the Consumer Protection Act B.E. 2522 (1979), the definition of *"consumer"* establishes the scope of legal protection. However, when applied to Dark Patterns, certain deceptive design strategies may fall outside this definition, creating challenges in enforcement and regulation. A comparative analysis of Thai and international legal frameworks may help identify gaps and propose solutions to strengthen consumer rights against manipulative digital practices.[5]This provision grants broad protection to consumers, covering buyers, users, and individuals who have been solicited to purchase goods or services. A key element is that the person must have been persuaded to make a purchase or have received an offer for goods or services. The interpretation of this definition can be analyzed through several key aspects as follows:

First, the concept of *purchase* must include **rental, hire-purchase, or acquisition by any means**, thereby extending protection to **end users**—those who ultimately consume or utilize the product or service.[6]Regardless of whether the individual is a natural person or a legal entity, they are considered to fall under the protection of the Consumer Protection Act B.E. 2522 (1979). Furthermore, individuals who have been solicited or persuaded to purchase a product or service are also covered, even if they have not yet made a purchase. This definition also extends to individuals who use goods and services without directly paying for them.

The deceptive techniques used by businesses involve distortion and manipulation to influence consumer decisions. These tactics can be assessed in relation to the definition of "consumer" in Section 3 of the Consumer Protection Act. For instance: Hidden Costs: When additional fees appear only at the final stage of a purchase, consumers who unknowingly pay extra are victims of deception. Roach Motel: When a service is designed to be easy to subscribe to but difficult to cancel, consumers who wish to opt out but face obstacles are affected by unfair contract terms. And, Confirm Shaming: Businesses use emotional pressure, color-coded symbols, or countdown timers to create a sense of urgency and anxiety. If consumers make a purchase under such psychological pressure, they may be deemed victims of unfair persuasion.

Thus, under Section 3, individuals deceived by dark patterns qualify as consumers, as they have been induced or led to purchase goods or services. They

[3] AutoriteitConsument&Markt (ACM). What are Dark Pattern?.https://www.acm.nl/system/files/documents/gray-dark-patterns-interview-2023-acm.pdf
Varela, A. (2024). **10 Dark patterns in UX design and how to avoid them.** ***Bejamas***. https://bejamas.com/blog/10-dark-patterns-in-ux-design.

[4]Consumer Protection Act, B.E. 2522, Section 3.

[5]"Consumer" means a person who purchases or receives services from a business operator, or a person who is offered or invited by a business operator to purchase goods or receive services, and also includes a person who uses goods or receives services from a business operator in a legitimate manner, even if not harmed."

[6]ChutamasThirawatt (2024).Amendment of the definition of "consumer" in the Consumer Protection Act, B.E. 2522: A pathway to enhancing consumer protection in Thailand: Final report. Thammasat University, Faculty of Law, p. 15.

"End user" refers to an individual or organization that uses goods or services directly, without reselling or using them in the production of other goods or services.

are entitled to legal protection under the Consumer Protection Act.

However, some dark patterns remain ambiguous and may not fall within the scope of protection. Their classification requires additional legal elements. For example, Section 22 of the Consumer Protection Act prohibits false or deceptive advertising. Certain dark patterns, such as confirm shaming or hidden cancellation options (Roach Motel), may not qualify as direct advertising, which complicates their classification as forms of solicitation.

Addressing Legal Gaps in Consumer Protection

To resolve these issues, it is necessary to establish clear legal definitions and evaluation guidelines for dark patterns. The European Union has begun implementing regulations on deceptive web and app design, outlining criteria for assessing and proving dark pattern violations. In contrast, Thailand's legal framework focuses on consumer rights protection against exploitation. If a dark pattern misleads consumers or prevents them from making informed decisions, it may be deemed unlawful or unfair.

Legal Precedents in Thailand

Currently, there are limited case studies on dark patterns in Thailand, and no direct court rulings addressing these practices. However, past court decisions provide analogous interpretations of consumer rights. For example, in Supreme Court Judgment No. 1808/2561, a defendant concealed key information about land expropriation. Had the consumers been aware of this fact, they would not have entered into the contract. The court ruled that withholding material information constitutes unfair advertising, as it misleads consumers about the essential nature of the product.

This ruling suggests that if a dark pattern similarly distorts information or misleads consumers, it could be legally challenged under Thailand's consumer protection laws.[7] The Supreme Court's ruling focuses on the nature of solicitation or whether the defendant received an offer from a business entity. Furthermore, when a business fails to disclose essential information that consumers should know, it directly affects consumer rights. In such cases, consumers are treated unfairly in contractual agreements, making the contract voidable (voidable contract), and this is considered a direct violation of consumer rights.

International Regulation of Dark Patterns

From a comparative legal perspective, the European Union (EU) has enacted multiple regulations to protect consumers from deceptive business practices (dark patterns). These include: General Data Protection Regulation (GDPR) and Digital Services Act (DSA)

The interpretation of "consumer" in the context of dark patterns must take into account the vulnerability of digital-age consumers, especially those with limited technological literacy. This necessitates strict law enforcement, consumer education, and awareness programs for businesses.

In the EU, the definition of "consumer" is outlined in consumer protection laws. Generally, a consumer is considered to be a natural person purchasing goods or services for personal purposes, rather than for business activities. Under Directive 2011/83/EU (Consumer Rights Directive - CRD), Article 2(1) states that:

"A consumer means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft, or profession."

This establishes a clear legal framework distinguishing consumers from businesses, ensuring they receive protection when engaging in commercial transactions.[8]This interpretation focuses on the protection of individuals in a position of disadvantage compared to businesses. Furthermore, EU law seeks to fill gaps through other related regulations, such as Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR), which aims to protect consumer groups, specifically those who are end consumers of products. Similarly, Thailand's protection laws for online platforms ensure protection against the unfair use of data. The consideration is made within the following framework: the individual must be a natural person, not a company, using products/services for personal purposes, and they are protected by law if they are affected by unfair practices, which include being harmed by tricks and traps, such as in the case study of Meta (Facebook)v.GDPR[9]Meta has been criticized for using Dark Patterns to obtain user consent regarding advertisement tracking. The court confirmed that users must give their consent voluntarily (Freely Given Consent) under the GDPR. Meta was fined over 390 million euros for violating data protection laws. In another case, the European Commission investigated Amazon for designing an Amazon Prime sign-up button to be easy to complete, while making the cancellation button much harder to find. This is considered a "Roach Motel" trap. Amazon was forced to redesign its UI to make cancellation easier, in line

[7]Supreme Court Judgment No. 1808/20181

[8]Age VärvMargusKingisepp. (2011).**The Notion of Consumer in EU Consumer Acquis and the Consumer Rights Directive—a Significant Change of Paradigm?**

[9]*1.2 billion euro fine for Facebook as a result of EDPB binding decision | European Data Protection Board*. (n.d.). https://www.edpb.europa.eu/news/news/2023/12-billion-euro-fine-facebook-result-edpb-binding-decision_en

with the Consumer Rights Directive. Therefore, if a platform is designed to deceive consumers, it constitutes a violation of the law. Consumers have the right to protection, even if they are not paying but are affected by deceptive persuasion. The two cases above highlight the European Union's efforts to protect consumers in the digital age. EU laws have attempted to close legal gaps to enforce effective regulation by issuing relevant legislation.

The regulation of deceptive traps in various dimensions, such as the Consumer Rights Directive (CRD) - Directive 2011/83/EU, mandates that consumers must receive clear information before making transactions. The Digital Services Act (DSA) – 2022 requires online platforms to avoid using deceptive traps that force users into subscribing to services. The General Data Protection Regulation (GDPR) – Regulation (EU) 2016/679 prohibits using deceptive traps to trick users into consenting to the use of their personal data. These actions send a clear message to tech companies that they must respect consumers' privacy rights and avoid using deceptive design techniques. Thailand should amend its regulations to provide clearer oversight on deceptive traps and establish guidelines for regulatory bodies involved in such cases.

Creating guidelines for the relevant regulatory bodies on handling deceptive traps is crucial in protecting consumers from deceptive design strategies and data manipulation. A review of EU guidelines shows a strong focus on this issue, with legislation and practices designed to protect consumers from deceptive traps. For example, the Digital Services Act (DSA) aims to create a safe and transparent online environment by banning Dark Patterns that distort or lead users to make decisions unwillingly. This law requires large online platforms to assess and mitigate risks related to deceptive consumer traps and provide transparent information to users about how the platforms operate.[10]Furthermore, the European Commission has published guidelines to help both consumers and businesses understand the nature of deceptive consumer traps and how to prevent them. The law regulating the online world forces technology companies to take greater responsibility for the content appearing on their platforms. The enforcement of this new law will require platforms to remove illegal content and products more quickly, as well as impose stricter measures on the dissemination of incorrect information. Failure to comply with these new requirements could result in fines. For example, the Irish Data Protection Commission has fined platforms for violating privacy laws, such as in the case of TikTok, which was fined for failing to adequately protect children's data.[11] Although the European Union has a clear legal framework to regulate the use of deceptive traps, challenges remain in enforcement and defining these practices clearly. Academics and stakeholders have called for more precise definitions and more effective enforcement of the law.

Currently, in Thailand, there are agencies responsible for regulating the use of deceptive traps under the Consumer Protection Board (CPB), which has become more aware of the issue of consumers falling victim to deceptive traps. The CPB has taken actions to raise public awareness about these dangers through various methods, such as disseminating videos that educate about deceptive design practices to enhance understanding and social awareness. However, Thailand still has legal gaps and should improve or create specific laws to regulate the use of deceptive traps within the country to keep up with the rapidly changing situation and remain aligned with international standards. Until such laws or regulations are enacted, it is essential to develop clear guidelines for consumer protection to prevent harm and create a safer online ecosystem.

II. CONCLUSION

Consumer protection from deceptive traps (Dark Patterns) in Thailand is still under development in terms of related laws or regulations, and there is no clear definition of deceptive traps. However, existing laws are being used to protect consumers from deceptive business practices. Consumers have rights that should be protected under the Consumer Protection Act B.E. 2522, which includes the right to truthful information, the right to freedom of choice, the right to safety, the right to fairness in contracts, and the right to consideration and compensation for damages. Section 3 of the Consumer Protection Act B.E. 2522 serves as the first step in ensuring fairness. Clear guidelines for determining the scope of consumer protection are necessary, and further legal regulations or measures related to deceptive traps should be established. Some types of deceptive traps may be unclear in terms of whether they fall under consumer protection definitions, as each type of trap carries different levels of risk or is used differently by businesses, as seen in the European Union.

In the absence of specific laws or regulations, it is crucial to develop clear guidelines for consumer protection, raise awareness through relevant agencies, and educate consumers about deceptive traps and how to protect themselves. Additionally, it is important to ensure protection through related laws such as those governing electronic transactions and

[10]The MATTER. (2021). EU passes law regulating the online world, forcing technology companies to explain their algorithms. *The MATTER*. Retrieved from https://thematter.co/brief/173247/173247

[11]**Bangkokbiznews. (2023).** Fined “TikTok” 368 million dollars for violating EU laws. *Bangkokbiznews*. Retrieved from https://www.bangkokbiznews.com/world/1088897

personal data protection, to close the gaps that may lead to exploitation and unfair experiences when purchasing goods or services online.

ANALYSIS

The study shows that deceptive traps have been used to deceive consumers, resulting in unfair harm when purchasing goods and services. Under the protection provided by Section 3 of the Consumer Protection Act B.E. 2522, there needs to be a clear guideline for interpretation to ensure alignment with the scope of protection. Furthermore, there should be direct regulations specifically targeting deceptive traps, or other laws should be introduced to regulate them, as seen in the European Union's Digital Markets Act.

SYNTHESIS

The establishment of laws specifically targeting the regulation of deceptive traps will help ensure more comprehensive protection. However, Section 3 of the Consumer Protection Act B.E. 2522 is an important provision that highlights the impact on consumers and serves as the gateway to further legal processes. The European Union has enacted laws that directly regulate deceptive traps, along with proactive measures such as examining the nature of design practices, to create fairness for both the market and consumers in a more stringent manner.

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