

Survey of Transactions Related to the “Dark Patterns”

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Abstract

We have collected and analyzed manually, based on the categories of the OECD and taking other categories into account, the actual situation of transactions

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related to “dark patterns” on websites where Japanese consumers can browse and conduct transactions of goods and services, targeting those that are considered to have troubles with consumers based on information on consumer affairs consultations and those that are considered to have many cases of use by Japanese consumers based on their sales figures.

As a result, among categories of the dark patterns, the largest number of websites were found to fall under “preselection,” followed by “false hierarchy,” “testimonials,” and “forced registration,” in that order. Comparing the results among the survey targets, the applicability was relatively clear in many cases in the survey based on consultation information, and a certain number of websites were found to fall under more than 10 categories, whereas none were found in the survey based on sales figures. Regarding the industry categories in the survey based on sales figures, “preselection” was found on all the general shopping websites, as well as on all the food, cosmetic/pharmaceutical sales, and accommodation services websites included in the survey. On the other hand, no cases were found in some of the categories. In relation to existing Japanese legal systems, some of the cases seemed to be related to Act against Unjustifiable Premiums and Misleading Representations, Act on Specified Commercial

Transactions, Act on the Protection of Personal Information, Act on Regulation of Transmission of Specified Electronic Mail, and so on.

Taking the cases as a whole, there were many combinations of multiple categories, such as “false hierarchy” and other categories, as well as same or similar cases, indicating the need to take measures to deal with them. In addition, there were some unique and distinctive cases, such as “confirmation of consent by a legal representative of a minor,” and as for “deemed consent,” even if it is not immediately illegal or unfair under the current law, there seems to be room for consideration from the perspective of protecting the interests of consumers. Furthermore, it was found that the matters emphasized in website displays or designs may have an important influence on consumer decision-making, even if they are not the content of the product or service or the terms and conditions of the transaction.

From the viewpoint of policy responses, it is considered necessary to integrate and subdivide categories according to the actual situations of transactions in Japan, as well as to make the criteria for evaluating the applicability of the categories objective and standardized, while taking into account the combination of elements of multiple categories as described above and the viewpoint of deterring the origin

of the same or similar cases. As a future issue, it is required to conduct empirical experiments on the impact on consumer decision-making, referring to previous research studies, while also taking into consideration the aspects of vulnerability and convenience of consumers.