

# A Prime Example of Dark Patterns? FTC Sues Amazon for Use of “Dark Patterns” in Prime Enrollment

## The Bottom Line

- The FTC’s lawsuit is likely to be the first of many alleging the use of “dark patterns” in e-commerce and is instructive as to the specific types of practices the FTC will find deceptive in the future.
- Against the backdrop of the FTC’s revisions to the Negative Option Rule, the FTC will continue to crack down on overly onerous cancellation procedures.
- E-commerce companies should review their online platforms to prepare for future compliance mandates and revise e-commerce user-experience flows and consumer-facing disclosures.

The Federal Trade Commission (FTC) filed a complaint against Amazon alleging that the company engaged in “dark patterns” to trick millions of consumers into enrolling in their Prime membership program. The FTC claims Amazon is “aware that its practices are legally indefensible” and is seeking civil penalties and a permanent injunction to prevent Amazon from continuing these practices.

This action, filed in the U.S. District Court for the Western District of Washington, is the latest in a recent wave of activity by the FTC on dark patterns, including the [FTC Staff Report on Dark Patterns](#) and its release of [proposed updates to the federal Negative Option Rule](#). The lawsuit alleges that Amazon used dark patterns to trick consumers into enrolling in automatically renewing Prime subscriptions, and purposefully made it difficult for users to cancel their subscriptions. Echoing the FTC’s prior guidance, “dark patterns” are specifically defined in the complaint as “manipulative design elements that trick users into making decisions they would not otherwise have made.” These include “coercive or deceptive user interface designs.” In particular, the complaint alleges that Amazon’s complex cancellation process was specifically intended to thwart consumers’ attempts at cancellation – in fact, the user flow was internally named the “Iliad Flow” after Homer’s lengthy epic.

## Dark Patterns

The complaint addresses specific examples from Amazon's e-commerce sites illustrating the types of "dark patterns" cited in the FTC's prior Staff Report. The FTC's complaint is extremely instructive as to the granular types of practices it views as deceptive, from color and shading usage meant to trick consumers into a certain user pathway to obstructionary or intentionally confusing techniques.

The FTC highlighted specific types of dark practices:

### Non-consensual Enrollment

Amazon allegedly "knowingly duped... customers into unknowingly enrolling in its .... service" by employing tactics to purposefully trick consumers into enrolling in automatically renewing subscriptions. For example, Amazon "fail[ed] to obtain the consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for the transaction." The complaint also alleges that Amazon "slowed, avoided, and even undid user experience changes that they knew would reduce Nonconsensual Enrollment."

### Forced Action

The FTC alleged that Amazon used "a design element that requires users to perform a certain action to complete a process or to access certain functionality." For example, by "forc[ing] the consumer to choose whether to enroll in Prime before allowing the consumer to complete her purchase."

### Interface Interference

By using "a design element that manipulates the user interface in ways that privilege certain specific information relative to other information," Amazon purportedly deceived consumers. For example, Amazon:

- Revealed the terms and conditions of Prime only once during the purchase process, in a small and easy to miss font.
- Used repetition and color to direct consumers' attention to the words "free shipping" and away from Prime's price.
- Emphasized options that divert the consumer from the flow without cancelling and by employing warning icons near the option to cancel, which "evokes anxiety and fear of loss in consumers."

**Obstruction or “Roach Motel” Technique**

The FTC considers this technique to be “a design element that involves intentionally complicating a process through unnecessary steps to dissuade consumers from action.” For example, the FTC alleged that Amazon made the option to decline enrollment difficult to locate, and forced consumers who already expressed an intent to cancel to view marketing and reconsider options.

**Misdirection**

By using “a design element that focuses a consumer’s attention on one thing to distract from another,” Amazon allegedly presented asymmetric choices that make it easier to enroll in Prime than not, including by using a less prominent looking link to decline Prime, and making it easier to abandon an attempted Prime cancellation than to complete it. Amazon also used attractors – such as animation, a contrasting blue color and text – to direct consumers to options other than cancellation (e.g., drawing attention to “Remind me later” and “Keep my benefits” options rather than “Continue to Cancel”).

**Sneaking**

According to the FTC, Amazon used “a design element that consists of hiding or disguising relevant information, or delaying its disclosure” to, for example, hide Prime’s price or its auto-renewal feature in the consumer’s cart. The design element also makes difficult to find Prime’s terms and conditions during the enrollment checkout flow, including its price and auto-renew attribute, the FTC added.

**Confirmshaming**

The FTC also alleged that Amazon used “a design element that uses emotive wording around the disfavored option to guilt users into selecting the favored option.” While the complaint redacts specific instances of Amazon’s confirmshaming, a classic example of this is using language like “No, thanks. I like full price.”

**Cancellation and Upsell Tactics**

The FTC also cited Amazon’s failure to provide simple cancellation mechanism as a Restore Online Shoppers’ Confidence Act (ROSCA) violation, stating that the company “fails to provide simple mechanisms for a consumer to stop recurring charges for the good or service to the consumer’s credit card, debit card, bank account, or other financial account.” Echoing its proposals on “click to cancel” and “mirror cancellation” in the proposed updates to the Negative Option Rule, the FTC highlighted Amazon’s “knowingly complicated cancellation process.”

While consumers were able to enroll in Prime from a variety of devices, to cancel, users were forced to call customer service, or use a complicated process called the “Iliad Flow,” which refers to Homer’s epic about the long, arduous Trojan War. The Iliad Flow was referred to as “labyrinthine,” as customers seeking to cancel their subscription were forced “to navigate a four-page, six-click, fifteen-option cancellation process” as compared to the one or two click sign-up system.

Amazon was also cited for its use of “upsell” tactics, as consumers attempting to cancel were presented “with at least one opportunity... – and often several opportunities – to join Prime before those consumers place their order on the final checkout page.” The FTC stated that the upsell tactics disrupted the consumers’ shopping experience with a “prominent” enrollment button and an “inconspicuous” decline link. Customers were unable to avoid the upsell, but instead forced to select one of the options to continue their checkout process.

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## For More Information

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