COMPLAINT TO THE ATTORNEY GENERAL OF THE STATE OF WASHINGTON
Against STARBUCKS CORPORATION for
Consumer Deception under the Washington Consumer Protection Act

Submitted by the Washington Consumer Protection Coalition
December [__], 2023

The Washington Consumer Protection Coalition *consists of working families, non-profits, and everyday Washingtonians advocating for consumer protection in the Evergreen State.*

Introduction

For several years, Starbucks has subsidized its operations with significant customer cash inflows generated at least in part by using unfair and deceptive practices to manipulate its 33-million rewards program members[1] into paying in advance for their purchases. Specifically, the coffee giant has built multiple design practices, known as "dark patterns," into its "Payment Platform," which comprises (1) Starbucks' mobile app and (2) a digital Starbucks payment card, which is technically a reloadable gift card (together with the physical version of the reloadable gift cards and Starbucks eGift Cards, "Starbucks Cards" or "Cards").[2] Together, these dark patterns have the effect of steering Starbucks customers to hand over to the company more money than they might have otherwise chosen to. The Starbucks app has been considered crucial to the company's success,[3] and in recent years, the Payment Platform handled more mobile payments than Apple Pay or Google Pay.[4] And, the Payment Platform is a key piece of the Starbucks loyalty program and rewards program, from which Starbucks derives immense economic benefit: Customers loaded roughly $15 billion onto Starbucks Cards last year,[5] and

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[1] PYMNTS, Starbucks Taps Additional Rewards Partnerships to Widen Loyalty Audience (Nov. 3, 2023), https://www.pymnts.com/news/loyalty-and-rewards-news/2023/starbucks-taps-additional-rewards-partnerships-widen-loyalty-audience/.

[2] Starbucks Cards are technically reloadable gift cards onto which consumers load (and reload) dollars as prepayment for Starbucks products. Starbucks Cards can be physical, digital, or both. When a Starbucks customer joins Starbucks Rewards, they are automatically provided with a digital Starbucks Card with a zero balance. Starbucks customers may also add a physical plastic Starbucks gift card or Starbucks Card eGift to the Starbucks app by adding the 16-digit Starbucks Card number and security code. Thus, Starbucks Cards include: (1) digital Starbucks Cards, (2) digital forms of physical Starbucks plastic cards, (3) physical Starbucks plastic cards, and (4) Starbucks Card eGifts. Importantly, if a customer has a physical plastic Starbucks Card and a digital form of that same card in the Starbucks app, the customer may pay or reload using either, in a similar way that many consumers today have physical credit cards and digital versions of those same credit cards in mobile wallets like Google Pay and Apple Pay. *See*, Starbucks Rewards Terms of Use, https://www.starbucks.com/rewards/terms/ (effective July 28, 2023).

[3] *See*, *e.g.*¸ Bernard Marr, Starbucks: Using Big Data, Analytics And Artificial Intelligence To Boost Performance, Forbes, (May 18, 2018), https://www.forbes.com/sites/bernardmarr/2018/05/28/starbucks-using-big-data-analytics-and-artificial-intelligence-to-boost-performance/?sh=725d313565cd.

[4] Fast Company, What happened to Starbucks? How a progressive company lost its way (Mar. 17, 2022), https://www.fastcompany.com/90732166/what-happened-to-starbucks-how-a-progressive-company-lost-its-way. Importantly, at the time Starbucks handled more payments than Apple Pay or Google Pay – in 2018 and most of 2019 – the Starbucks app *only* allowed payments to be made via in-app Starbucks Cards, not alternate payment methods like credit cards or debit cards. At that time, all app users were also Card users.

[5] This figure is estimated from the number Starbucks reported for "revenue deferred - card activations, card reloads and Stars earned" in its 2023 Annual Report. Starbucks Corp., Annual Report on Form 10-K (Nov. 17, 2023),

the company relies on these funds as a source of interest-free operating capital. The company has, therefore, a powerful incentive to maximize the funds flowing onto the Payment Platform, and in fact seeks to maximize this flow by using several manipulative digital design features on its mobile app. These practices are deceptive and unfair dark patterns because they "trick or manipulate users into making choices they would not otherwise have made and that may cause harm."[6]

The dark patterns employed by Starbucks on its Payment Platform include: (1) allowing customers to reload Cards on the mobile app only in specific amounts with a $10.00 minimum; (2) setting a default reload amount of $25.00 on the app and displaying $15.00 as the lowest reload amount, even though the actual minimum reload amount is $10.00; (3) limiting tipping through the app; and (4) disallowing customers from splitting payments across multiple payment methods when they order through the app and pay using their in-app Card. The first two practices tend to force customers to load inflated amounts onto their Cards; the latter two practices prevent customers from using small Card balances and zeroing out their accounts.

Because Starbucks also makes it difficult or impossible for customers to reclaim funds from their Cards except by making Starbucks purchases, these practices trap consumers into perpetually reloading funds on their Starbucks Cards in an effort to use all remaining funds, which essentially amounts to an involuntary Starbucks subscription. Each of these practices tends to push customers towards choices they might not have otherwise made, in violation of the Washington Consumer Protection Act's prohibition against unfair and deceptive trade practices.[7]

Indeed, the experiences of several individual Washington consumers – described in detail in the section titled "Starbucks' Payment Platform Practices Violate the Washington Consumer Protection Act" – illustrate these dynamics and the harm these practices have caused. These consumers report frustration with having to pay for Starbucks purchases using preloaded funds on Starbucks Cards in order to earn full rewards and with not being able to reload the exact amount of money they need for a given purchase. They also report that they perpetually have balances on their Starbucks Cards that they are unable to spend down to zero, even though they would like to zero-out their balances. They report being trapped in a "vicious cycle" of reloading more money in an effort to try to spend old balances, which are always there but never enough to cover the next purchase. Consumers noted spending more money at Starbucks because of high reload minimums than they would have if they had been able to load the exact amount of money required for the item they actually desired to purchase. One consumer reported always reloading $25 at a time, not having seen the option to reload less at a time. These

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https://d18rn0p25nwr6d.cloudfront.net/CIK-0000829224/f46ecb43-3db3-4e70-9959-103e92951d49.pdf ("2023 Annual Report"), at 71 (listing $14,922.1 billion in "revenue deferred - card activations, card reloads and Stars earned"). Starbucks does not report the dollar value of Stars earned, but it is likely no more than a few percent of this total. *See* Ben Schlappig, Guide To Maximizing Starbucks Rewards Stars, One Mile at a Time (Jan. 17, 2021), https://onemileatatime.com/starbucks-rewards-stars/ (estimating the value of Starbucks points at 4-5 cents per Star); Ben Schlappig, Starbucks Rewards Devaluing February 2023, One Mile at a Time (Dec. 28, 2022), https://onemileatatime.com/news/starbucks-rewards-devaluing/ (estimating that recent changes to the Starbucks rewards program have devalued the value of points by 33-100% when redeemed for the most popular redemptions).

[6] FTC, *Bringing Dark Patterns to Light* (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

[7] *See* RCW 19.86.020.

consumers also expressed frustration with not being able to tip custom amounts or split payments over different payment forms – especially if this would help them get their Card balance to zero. Indeed, these customers expressed bewilderment at the fact that Starbucks – a company with a reputation for its exceptional customer experience – engaged in such customer-unfriendly practices. These consumers have suffered concrete injuries in the form of monetary loss because they have repeatedly loaded and spent more funds than they desired or intended onto their Payment Platform accounts.

Because of the sheer scale and reach of the company, it is clear Starbucks' dark patterns harm a large number Washington consumers in ways the individual consumers' experiences illustrate. Starbucks' practices have a major impact on consumers in the United States, and proportionately, a still greater impact on consumers in Washington. Starbucks is the largest coffee chain in the world, with 38,000 stores globally and $36 billion in annual revenue.[8] It is the second largest quick service restaurant chain in the United States,[9] where it holds 41 percent of the coffee shop market[10] and operates over 16,000 stores.[11] Thirty-three million Americans are active members of the Starbucks rewards loyalty program,[12] suggesting that roughly 760,000 Washington residents could be active members.[13] However, there are nearly twice as many Starbucks stores per capita in Washington state as the national average, so Starbucks' consumer practices likely have an outsize impact on the state's residents.[14]

The unfair and deceptive dark patterns that Starbucks has built into the Starbucks Payment Platform therefore merit urgent investigation and action by the Attorney General.

Background

How the Starbucks Payment Platform Works

The Payment Platform functions as at method for paying, ordering, and accumulating and using rewards points for members of Starbucks' rewards program. The app electronically records account information,

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[8] Starbucks, Q4 2023 Earnings Report (Nov. 2, 2023), https://investor.starbucks.com/press-releases/financial-releases/press-release-details/2023/Starbucks-Reports-Q4-and-Full-Year-Fiscal-2023-Results/default.aspx ("Starbucks Q4 2023 Earnings Report").

[9] 2022 QSR 50 Report, *QSR Magazine* (Aug. 1, 2022), https://www.qsrmagazine.com/reports/2022-qsr-50-industrys-leading-annual-report.

[10] Starbucks posts strong first quarter, but Covid restrictions hit sales in China, World Coffee Portal (Feb. 3, 2023), https://www.worldcoffeeportal.com/Latest/News/2023/February/Starbucks-posts-strong-Q1-US-revenues-but-Covid-19.

[11] Starbucks Q4 2023 Earnings Report, *supra* note 8 (reporting 16,352 company-operated stores open 13 months or longer in the U.S.).

[12] *Id.* (reporting 32.6 million 90-day active members in the U.S. for the Starbucks Rewards loyalty program).

[13] U.S. Census, QuickFacts: Washington, https://www.census.gov/quickfacts/fact/table/WA (last accessed Dec. 7, 2023) (reporting that the estimated population of Washington State as of July 1, 2022 to be 7,785,786); U.S. Census, QuickFacts: United States, https://www.census.gov/quickfacts/fact/table/US/ (last accessed Dec. 7, 2023) (reporting that the estimated population of the United States as of July 1, 2022 is 333,287,557). Thus, Washington State represents 2.34% of the U.S. population. Assuming Starbucks Rewards Members are evenly distributed throughout the U.S. population, 2.34% of Starbucks Rewards Members would be Washington residents – or 761,554 Washington residents.

[14] Starbucks Q4 2023 Earnings Report, *supra* note 8 (reporting 16,352 stores in the U.S.); Scrape Hero, Number of Starbucks Stores in the United States in 2023 (Oct. 9, 2023), https://www.scrapehero.com/location-reports/Starbucks-USA/ (reporting 746 Starbucks stores in Washington in 2023).

including dollar balances on a customer's in-app Card, for each rewards program member.[15] Participating customers may load funds onto their in-app Card using the Starbucks mobile app and may purchase Starbucks products using these Card funds or using a non-prepaid payment method such as a linked credit card. Most purchases made on the app use prepaid funds.[16] Customers can then use the app to order Starbucks products, for which they prepay. Alternatively, customers may order Starbucks products at the store and pay there by scanning the app.[17]

As customers make purchases using the app, they are credited with rewards points called "Stars" which, as they accumulate, may be exchanged for additional Starbucks products. Purchases made with Starbucks Cards earn twice as many Stars as purchases funded from third-party accounts such as credit cards.[18] Neither leading fast-food chains nor major retailers, such as Amazon and Walmart, encourage prepayment in this way.[19]

The Payment Platform's Importance to Starbucks

The Starbucks Card grew out of the company's gift card program, which originated in 2000 when Starbucks approved the creation of a reloadable, prepaid card to replace paper gift certificates.[20] In 2011, Starbucks incorporated the Card into its mobile app, which it billed as "the nation's largest mobile payment program."[21]

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[15] When the Starbucks Card rewards program was first created in 2008, participating customers simply used physical plastic Starbucks Cards – which they reloaded at Starbucks cash registers or via the Starbucks rewards website – and then used them to purchase Starbucks products at the store. *See* Joanna Fantozi, The evolution of the Starbucks loyalty program, Nation's Restaurant News (Apr. 5, 2019), https://www.nrn.com/quick-service/evolution-starbucks-loyalty-program. The Starbucks rewards program can still be used this way today, though it is not clear what proportion of Starbucks rewards members access the program without also accessing the mobile app. None of the customers named in this complaint used physical plastic Starbucks Cards and only one had ever used the website. Furthermore, the Starbucks Rewards website, which can be used to (1) reload Starbucks Cards and (2) ordering and paying ahead, also contains several of the dark patterns discussed in this complaint (e.g., $10 reload minimum, not being able to reload custom amounts).

[16] In July 2021, Starbucks executives claimed that the "vast majority" of rewards app customers using "alternate payment methods," or credit and debit cards, were new or newly active rewards members. The implication, therefore, is that almost all non-new rewards members do not use alternate payment methods but rather pre-load funds on their app accounts or physical cards – and non-new members accounted for the significant majority of all members. Starbucks Earnings Call Transcript Q3 2021, *Motley Fool* (July 27, 2021), https://www.fool.com/earnings/call-transcripts/2021/07/27/starbucks-corporation-sbux-q3-2021-earnings-call-t/.

[17] App-using rewards customers who order and pay at the store may use a payment method outside of the Starbucks app (e.g., Apple Pay, Google Pay or cash), and then scan a barcode in the Starbucks app to receive rewards points, at the rate of 1 Star per $1 spent.

[18] Earning Stars, Starbucks Rewards Terms of Use (effective July 28, 2023), https://www.starbucks.com/rewards/terms/#earning-stars.

[19] Based on SOC review of the rewards programs of McDonald's, Domino's, Taco Bell, Dunkin, Chick-fil-A, Sonic, Papa John's, Chipotle, Burger King, Wendy's, Amazon and Walmart.

[20] Allen Eskelin, *The Making of the Starbucks Card,* Peak Portfolio (2021), https://peakportfolio.com/starbuckscard/.

[21] Starbucks, Starbucks Mobile Transactions Exceed 26 Million Within First Year, (Dec. 5, 2011), https://stories.starbucks.com/stories/2011/starbucks-mobile-transactions-exceed-26-million-within-first-year/.

Starbucks views the Payment Platform as key to the company's success. In 2017, then-CEO Kevin Johnson described it as a "digital flywheel … that is driving deep customer engagement, revenue, and profit growth around the world."[22]

The scale of the Payment Platform and associated rewards program is massive to Starbucks: mobile orders accounted for 29 percent of U.S. Starbucks transactions at company-owned stores in the fourth fiscal quarter of 2023.[23] Also in the fourth fiscal quarter of 2023, 57 percent of all revenue from sales at Starbucks-owned stores in the U.S. came from rewards members,[24] and in 2022 prepayments – meaning payments via a Starbucks Card – accounted for "nearly half" of sales at Starbucks-owned stores.[25] In fact, in 2023, customer spending from Starbucks Cards represented approximately 40 percent of Starbucks' global revenues of $36 billion.[26]

In addition to the Starbucks Card and loyalty program as a revenue driver, preloaded funds on Starbucks Cards provide Starbucks with an interest-free, revolving line of credit, a fact not lost on the company when it first launched the physical version of the Card – the precursor to the digital Card – in 2002, when the company's Chief Financial Officer told the project manager who created it: "now I have a $20M interest free loan from our customers sitting in our bank account. This means we don't have to use banks for cash flow anymore."[27]

By the end of Starbucks' fiscal year in 2023 (September 30, 2022), this "interest free loan" – in the form of the combined balance of unspent money that was deposited onto Cards and unspent at that point – was almost $3 billion in the U.S. alone.[28] For context, this sum exceeds Starbucks' annual capital

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[22] Starbucks Earnings Call Transcript Q3 2017, Seeking Alpha (July 28, 2017), https://seekingalpha.com/article/4091735-starbucks-sbux-q3-2017-results-earnings-call-transcript.

[23] Starbucks Card, Loyalty & Mobile Dashboard (updated as of Oct. 9, 2023), https://s22.q4cdn.com/869488222/files/doc_downloads/2023/Q4-FY23-Digital-IR-Dashboard.pdf.

[24] Starbucks Earnings Call Transcript Q2 2023, *Motley Fool* (May 2, 2023), https://www.fool.com/earnings/call-transcripts/2023/05/02/starbucks-sbux-q2-2023-earnings-call-transcript/ (stating that "[r]ewards and members account for 57% of U.S. company-operated revenue in Q2 . . . .").

[25] Starbucks Corp., Investor Day – Morning Session (Corrected Transcript) (Sept. 13, 2022), http://q4live.s22.clientfiles.s3-website-us-east-1.amazonaws.com/869488222/files/doc_downloads/2022/09/CORRECTED-TRANSCRIPT_-SBUX_Morning-Session_Reviewed.pdf, at 33 (Chief Marketing Officer Brady Brewer reported that "[i]n the U.S. business, nearly half of all customer spending is prepaid, prepaid!").

[26] 2023 Annual Report, *supra* note 5, at 71 ("revenue recognized - card and Stars redemptions and breakage" is $14.8530 billion for FY2023). Breakage in 2023 was $215.0 million, and while Starbucks does not report the dollar value of Stars redeemed, it is likely no more than a few percent of this total. *See also id*. at 54, (reporting breakage revenue from company-owned stores as $196.1 million and licensed stores as $18.9 million), and 29 (total net revenue is $35.9756 billion for FY2023).

[27] Eskelin, *supra* note 20.

[28] Starbucks Card, Loyalty & Mobile Dashboard, *supra* note 23 (reporting "total dollars loaded" in U.S. on Starbucks Cards as $2.826 billion as of Q4 2023).

spending for the each of the past three years,[29] and exceeds the domestic deposits of 90 percent of FDIC-insured banks.[30]

The Payment Platform and the strategy behind it have been so successful that although the company has a revolving line of short-term credit, it has not reported ***any*** borrowing from this credit facility since at least 2018, enabling it to avoid paying interest for access to cash.[31]

The large customer balances on customers' Cards also provide accounting advantages to Starbucks. When consumers load funds onto their Cards, Starbucks books these funds as deferred revenue. However, customers often leave unspent balances in their accounts (in part, as a result of the dark patterns Starbucks employs, as discussed below), and each fiscal year Starbucks books its estimate of the amount that customers will likely never spend – termed "breakage" – as actual revenue. Over the last five years, Starbucks has recognized $894 million in breakage.[32] Further, in certain quarters breakage has made the difference whether Starbucks meets or exceeds analysts' consensus expectations.[33] Breakage revenue is also included for the purposes of calculating several forms of executive compensation, and large amounts of breakage revenue can inflate executive compensation.[34] These benefits give Starbucks further, strong incentives to maximize funds that customers load onto their Cards.

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[29] 2023 Annual Report, *supra* note 5, at 29 (reporting capital expenditures in FY2023 and FY2022 as $2.3 billion and $1.8 billion, respectively); 2022 Annual Report. Starbucks Corp., Annual Report on Form 10-K (Nov. 18, 2022), https://s22.q4cdn.com/869488222/files/doc_financials/2023/ar/Starbucks-FY22-Annual-Report.pdf ("2022 Annual Report"), at 27 (reporting capital expenditures in FY2021 as $1.5 billion).

[30] Telecom Review, Are You a Beneficiary of Starbucks Deposits? (May 29, 2023), https://www.telecomreview.com/articles/editor-s-choice/technology-pick/7087-are-you-a-beneficiary-of-starbucks-deposits. *See also* Jared Klee, Bad Money Rising, The Difference Between Starbucks and a Bank, LinkedIn (Apr. 6, 2022), https://www.linkedin.com/pulse/bad-money-rising-difference-between-starbucks-bank-jared-klee/?trk=public_profile_article_view (stating that Starbucks' $2 billion of customer money exceeds the "total assets" of 80% of the FDIC-insured banks in the U.S.).

[31] Starbucks reported no borrowing on its $3 billion revolving credit facility since it was established in 2021, or on the previous credit facility that was established in 2018. *See* 2023 Annual Report, *supra* note 5 at 35; 2022 Annual Report, *supra* note 29, at 33; Starbucks Corp., 2021 Annual Report on Form 10-K (Nov. 19, 2021), https://d18rn0p25nwr6d.cloudfront.net/CIK-0000829224/d2de114a-49d6-4994-8675-8454e5dd2289.pdf ("2021 Annual Report"), at 33; Starbucks Corp., 2020 Annual Report on Form 10-K (Nov. 12, 2020), https://s22.q4cdn.com/869488222/files/doc_financials/2020/ar/2020-Starbucks-Annual-Report.pdf, at 38; Starbucks Corp., 2019 Annual Report on Form 10-K (Nov. 15, 2019), https://d18rn0p25nwr6d.cloudfront.net/CIK-0000829224/9886e661-6686-4373-a0a4-033929d8d8dd.pdf, at 36-37; Starbucks Corp., 2018 Annual Report on Form 10-K (Nov. 16., 2018), https://d18rn0p25nwr6d.cloudfront.net/CIK-0000829224/4afc20cc-2933-41ec-b817-d11bcff947ca.pdf, at 41-42.

[32] Leslie Patton, Starbucks' $181 Million in Unused Gift Cards Spurs Labor Group Complaint, *Bloomberg* (Nov. 16, 2022), https://www.bloomberg.com/news/articles/2022-11-16/starbucks-181m-in-unused-gift-cards-sparks-complaint-to-sec-sbux?sref=cdlcj118; 2023 Annual Report, *supra* note 5, at 54; 2022 Annual Report, *supra* note 29, at 53; 2021 Annual Report, *supra* note 31, at 53.

[33] Request for investigation of Starbucks Corporation's inadequate disclosure regarding breakage, Letter from SOC to Director Gurbir S. Grewal of SEC (Nov. 16, 2022), https://thesoc.org/wp-content/uploads/2022/11/Signed-Starbucks-SEC-Letter_Breakage_11.16_Final.Watermarked.pdf.

[34] *See* Supplement to request for investigation of Starbucks Corporation's inadequate disclosure regarding Breakage, Letter from SOC to Director Gurbir S. Grewal of SEC (Jan. 26, 2023) (on file with SOC).

Starbucks' Use of Dark Patterns

Starbucks uses multiple practices in its Payment Platform to manipulate customers into reloading and keeping more funds onto Cards than they otherwise would. These include: (1) allowing customers to reload Cards via the app only in specific amounts with a $10.00 minimum; (2) using a default reload amount of $25.00 and displaying on the app a higher reload amount than the minimum available; (3) limiting tipping through the Starbucks app; and (4) disallowing customers from splitting payments across multiple payment methods when they order and pay through the app. The latter two practices prevent customers from using small amounts on their Cards via the app.

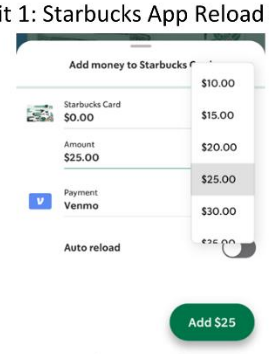
These practices tend to push customers towards choices they might not have otherwise made, and thus manipulate customers in ways that are deceptive or unfair or both.

The impact of these practices is exacerbated by the fact that except in the minority of states which require cash redemption of small gift card balances (which includes Washington[35]) Starbucks expressly refuses to allow customers to redeem the funds on their Cards for cash except where required by law.[36] Even in the states that require customers to be able to redeem small balances Starbucks may not comply with the required redemption rights, according to a recently settled class action lawsuit.[37] In combination, these restrictions mean that customers are generally only able to make use of the remaining funds on their Cards by reloading sufficient additional funds to allow the purchase of more Starbucks products, effectively trapping them into a perpetual involuntary de facto subscription.

1. Starbucks does not allow customers to reload Cards in increments that match menu prices.

As depicted in Exhibit 1, the mobile app allows customers to add cash to their Cards only in $5.00 increments – starting with a $10.00 reload minimum. However, many drinks at Starbucks in Washington cost less than $5.00 – ranging from a small coffee for $2.55 to a large Frappuccino for $6.45 – and none costs as much as $10.00.[38] Having a $10.00 reload minimum and $5.00 increments results in consumers being unable to reload just the amount they need to cover a one-time purchase – which then traps them into future purchases. This Catch-22 traps customers in a cycle that resembles an involuntary subscription.

Exhibit 1: Starbucks App Reload Screen



The app reload page has $10.00 minimum and reload intervals in $5.00 increments.

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[35] California (Cal. Civ. Code § 1749.5(b)(2)); Colorado (Colo. Rev. Stat. § 6-1-722(2)); Montana (Mont. Code Ann. § 30-14-108(4)); Oregon (Or. Rev. Stat. § 646A.276(1)(d)); New Jersey (N.J.S.A. 46:30B-42.1(h)); Rhode Island (R.I. Gen. Laws § 6-13-12(a)); Vermont (Vt. Stat. Ann. tit. 8, § 2704); Wash. Rev. Code §19.240.020(3).

[36] Starbucks Card Terms & Conditions, https://www.starbucks.com/terms/manage-gift-cards/ (effective July 24, 2023) (stating that "[u]nless otherwise required by law or permitted by this Agreement, the dollar value on your Starbucks Card is nonrefundable and may not be redeemed for cash.").

[37] *Spencer v. Starbucks Corp*., No. 2:22-cv-01123 (W.D. Wash. Aug. 11, 2022) (alleging Starbucks failed to provide a method to cash out cards in violation of state law).

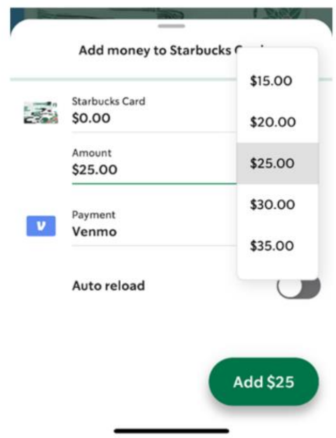
[38] Based on menu prices at Starbucks in Ellensburg, Kittitas County, accessed by SOC researchers online Oct. 11, 2023. The county was chosen because it has the median cost of living in the state. For cost of living, *see*: For single adults and families alike, higher cost of living in all Washington counties, U. Wash. (Oct. 15, 2020), https://www.washington.edu/news/2020/10/15/for-single-adults-and-families-alike-higher-cost-of-living-in-all-washington-counties/.

This practice is not an industry standard, as only one other quick service restaurant chain uses it.[39] Moreover, a customer who wants to reload a Card in person at a Starbucks store *can* reload custom amounts, although only if the amount is above $5.00. The fact that Starbucks is imposing more onerous limits on customer choices in the app than it imposes on in-store customers suggests that the limits in the app are deliberately designed to steer customers' actions.

2. <u>Starbucks' dark patterns trick customers into reloading excessive amounts onto their Cards</u>

Starbucks manipulates its customers into reloading high amounts each time they reload via the mobile app – $25.00 at a time – because the app's default reload amount is $25.00. That is, when reloading their accounts, customers' apps preselect $25.00 on the app screen, as shown in Exhibit 2. Thus, Starbucks Card users are encouraged to prepay for as many as nine small cups of coffee, or nearly four large, blended drinks, every time they reload.[40]

Exhibit 2: Starbucks Default Reload Screen



The app reload page does not display the $10 reload option, making it look like $15 is the minimum.

This same interface also deceptively makes it appear as though $15.00 is the *minimum* (as opposed to the preselected default) amount a customer can reload because this is the lowest amount displayed on the screen when a customer attempts to reload an amount different from the preselected $25 on the app. Instead, the true minimum is $10.00, but a customer would not know this unless they scrolled up to a portion of the screen that cannot be seen on the default reload screen. Further, scrolling up rather than down to locate additional options is contrary to usual conventions of internet design; scrolling down is the typical action required to identify additional options. Both the $25.00 reload default and the difficulty of viewing the $10.00 minimum reload amount are deceptive and unfair because they increase the likelihood that customers will be tricked into loading more money than they would otherwise have chosen to do.

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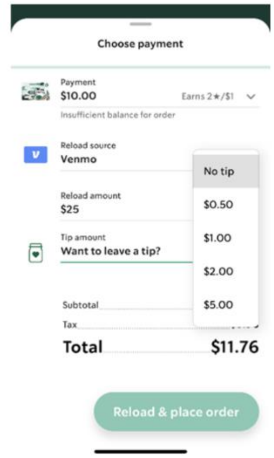
[39] Based on an examination of the functions of major rewards apps in the Quick Service Restaurant industry: Starbucks, McDonald's, Domino's, Taco Bell, Dunkin, Chick-fil-A, Sonic, Papa John's, Chipotle, Burger King, and Wendy's. The other QSR that requires reloads in five-dollar increments within its digital prepayment card system is Wendy's.

[40] Based on menu prices for a small coffee and a large Frappuccino at Starbucks in Ellensburg, Kittitas County, Washington. *See also supra* note 28.

3. <u>Starbucks impedes customers from zeroing out their Card balances by limiting tipping</u>

Starbucks does not allow customers to use their Card to tip in custom amounts, which further steers customers to load more funds by preventing them from zeroing out their balances. Customers with small balances on their Card that are insufficient to cover a Starbucks purchase – but which they do not want to waste – might opt to use the balance for a tip, thereby zeroing out their accounts. But if customers choose to tip when paying with their Cards through the app, Starbucks only allows them to tip $0.50, $1.00, $2.00, or $5.00, as depicted in Exhibit 3. This practice makes it nearly impossible to leave a tip that reduces the balance on their Card to zero.

Exhibit 3: Starbucks App Payment Selection Screen

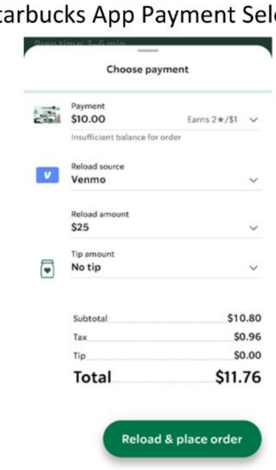


The app payment screen does not allow customized tipping.

4. <u>Starbucks further impedes customers from zeroing out Card balances by disallowing split payments</u>

Starbucks also makes it more difficult for customers to zero out their Card balances by disallowing split payments within the mobile app. For example, a customer whose order total is $11.00, and who only has $10.00 on their Card, must reload at least another $10.00 onto the Card in order to use the existing $10.00 on the current order – leaving them with a new card balance of $9.00.

Exhibit 4: Starbucks App Payment Selection Screen



The app payment selection screen does not allow for split payments.

Exhibit 4 shows that a customer who attempts to pay with their Card is met with the message "Insufficient balance for order." But the only option the app gives them to complete the payment is to reload more money onto their Card. The app does not allow the customer to combine their remaining Card balance with an alternative payment method like a credit or debit card – even when they already have those payment methods available for payment in the app. If Starbucks allowed for split payments in the app, a customer could use the $10.00 balance on the Card and another payment method – like a credit or debit card – to cover the difference, which would allow the customer to "zero out" their Card balance. Therefore, disallowing split payment via the app is another means by which Starbucks prevents customers from using up their Card funds entirely, and drives them to perpetually reload funds into their accounts.

However, a customer who wants to split payment in person at a Starbucks store *can* split payment between a Card and any other payment method. Once again, the fact that Starbucks makes certain choices impossible via the app that are still available in person suggests Starbucks has deliberately designed its Payment Platform to influence customer behavior in a way that is beneficial for Starbucks but harmful for the consumer.

Starbucks' Payment Platform Practices Violate the Washington Consumer Protection Act

The dark patterns that Starbucks has built into its Payment Platform are unfair and deceptive trade practices that violate the Washington Consumer Protection Act (CPA or Act).[41]

Business practices are unfair and deceptive under the Consumer Protection Act if they have "the capacity to deceive substantial portions of the public" or "are in violation of public interest."[42] By the express terms of the statute itself, the CPA is to be "liberally construed that its beneficial purposes may be served," and its interpretation guided by decisions of federal courts and the Federal Trade Commission's (FTC) interpretations of federal consumer protection law.[43]

The FTC has recently signaled its concern with, and taken enforcement action against, unfair and deceptive practices digital design features that it terms "dark patterns."[44] The Starbucks practices detailed above fall within the FTC's general definition of dark patterns because they are "design practices that trick or manipulate users into making choices they would not otherwise have made and that may cause harm."[45]

There is a growing body of evidence showing the harmful impact of online dark patterns on consumers. At the most general level, it is clear that dark patterns are "highly effective at influencing consumer behavior."[46] Dark patterns can double the percentage of consumers who make certain negative choices and "tend to have even stronger effects when" – as are Starbucks' – "they are combined."[47] There is also evidence that consumers using mobile devices, like those using Starbucks' mobile app, are particularly vulnerable to dark patterns because small screens make it easier to hide important information because of the scrolling required to display it.[48] Furthermore, dark patterns on mobile devices "may have a differential impact on lower-income consumers or other vulnerable populations."[49] Since the Starbucks

[41] RCW 19.86.020.
[42] *Klem v. Wash. Mut. Bank*, 295 P.3d 1179, 1187 (Wash. 2013).
[43] RCW 19.86.920.
[44] *See*, *e.g.*, Complaint and Consent Decree, *In re. Credit Karma*, FTC Matter No. 2023138 (Jan. 19, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023138-credit-karma-combined-final-consent-without-signatures.pdf; Final Order and Complaint, *In the Matter of Epic Games*, FTC Matter No. 1923203 (Mar. 14, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/1923203epicgamesfinalconsent.pdf. *See also Bringing Dark Patterns to Light*, *supra* note 6 (citing additional dark patterns cases throughout the report).
[45] *Bringing Dark Patterns to Light*, *supra* note 6, at 2.
[46] *Id.*
[47] *Id*.
[48] *Id*. at 3.
[49] *Id*.

Card is available to anyone over 13,[50] and teenagers constitute an important segment of its customer base,[51] it is likely that many of dark patterns detailed above have a particular impact on this group.

Because dark patterns are, by their nature, covert in their effects, many consumers do not realize they are being manipulated or misled, making evidence of impact presented by academic researchers and consumer advocates especially important for enforcement authorities.[52]

Starbucks' digital design practices exemplify specific types of dark pattern of which the FTC has warned. The requirement that Cards can be reloaded only in $5 increments, the preselection of $25 as the default reload amount, and the concealment of the option to reload as little as $10 are examples of the dark pattern variant that the FTC terms "preselection" whereby a "default that's good for the company, but not the user" is preselected.[53] Similarly, the restrictions on tipping customized amounts and on split payments fall within the type of dark pattern that the FTC terms "roadblocks to cancellation," because they make it hard or impossible to zero out Cards.[54]

Furthermore, as noted above, the overall effect of Starbucks' practices – encouraging prepayments onto Cards while discouraging zeroing out account balances – is to lure customers into a de facto involuntary subscription. The FTC has expressed particular concern with dark patterns that "trick or trap consumers into subscription services,"[55] and has taken enforcement action against businesses that have steered consumers into unwanted subscriptions through digital or other means.[56]

There is ample evidence that specific Washington consumers have been harmed by the dark patterns Starbucks maintains on its Payment Platform, as the accounts of four Washington residents below demonstrate.

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[50] Starbucks Card Terms & Conditions, *supra* note 36.

[51] *See* Alicia Kelso, Teenage Consumers Prefer Chick-Fil-A, Starbucks And Chipotle. Here's Why, *Forbes* (Oct. 14, 2022), https://www.forbes.com/sites/aliciakelso/2022/10/14/teenage-consumers-prefer-chick-fil-a-starbucks-and-chipotle-heres-why/?sh=1c4f24aa12c4 (reporting survey finding that Starbucks is the second most popular fast food brand among teenagers).

[52] *Bringing Dark Patterns to Light*, *supra* note 6, 3.

[53] *Id*. at 25.

[54] *Id*. at 22.

[55] *Id.* at 1.

[56] *See e.g.*, Fed. Trade Comm'n, FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel (June 21, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their; Fed. Trade Comm'n, FTC Settlement Bans Billing Scheme Operators from Negative-Option Sales (Feb. 1, 2012), https://www.ftc.gov/news-events/news/press-releases/2012/02/ftc-settlement-bans-billing-scheme-operators-negative-option-sales. *See also* Fed. Trade Comm'n, Enforcement Policy Statement Regarding Negative Option Marketing, 86 Fed. Reg. 60822 (Nov. 4, 2021), https://www.govinfo.gov/content/pkg/FR-2021-11-04/pdf/2021-24094.pdf; Fed. Trade Comm'n, FTC to Ramp up Enforcement against Illegal Dark Patterns that Trick or Trap Consumers into Subscriptions (Oct. 28, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap-consumers-subscriptions.

1. Michael Johnson

Michael Johnson, a 33-year-old consultant who lives in Seattle, uses the Starbucks Payment Platform regularly – at least once a month. He has been a Starbucks customer since high school and has been a Starbucks Rewards member since downloading the app more than 5 years ago. He initially downloaded the app and joined Starbucks Rewards in order to earn rewards points, given how regularly he purchased Starbucks. He sometimes uses the mobile order and pay function and other times walks into a Starbucks location to order in person and pay at the cash register. He always pays with the in-app Card in order to earn full rewards – 2 Stars per dollar spent instead of 1 Star per dollar spent. He reloads his Starbucks Card as needed, which is approximately every other visit. He virtually always reloads $10 because that is the minimum reload amount in the app. He does not like having a balance on his Starbucks Card "just sitting there" as opposed to in a high-yield savings account, for example. He has even looked for ways to transfer the balance off of his Starbucks Card and has never seen an option to do so. He wishes the app allowed him to simply reload the amount required for a specific purchase so that he never had an overhanging balance. He has not tipped through the app before – not having seen the option to do so – but wishes he could, especially if he could tip a custom amount that matched the balance on his Starbucks Card. The need to use remaining balances on his Starbucks Card leaves him feeling "locked in" to Starbucks and trapped in a "vicious cycle" of reloading funds in order to use those prior balances.

2. Jessica Williams

Jessica Williams, a 30-year-old data entry specialist who also lives in Seattle, reported a similar experience. She has also been a Starbucks customer since high school. She joined Starbucks Rewards by signing up for the mobile app approximately 8 years ago, when she was commuting to work and going to the Starbucks drive-thru on a regular basis. She wanted to earn rewards given how frequently she was going to Starbucks, and she also enjoyed being able to order ahead through the app. She reloads as she needs to – always the minimum, which is $10. Reloading $10, she says, will always leave her with "a couple dollars leftover" from her order, which will not be enough for the next order – so "the cycle repeats itself." She reports living paycheck-to-paycheck and feeling frustrated by having a "perpetual balance" on her Starbucks Card, instead of having those dollars available to her in a "more liquid" way. She wishes the app allowed for split payment methods so that she could simply "pay the difference" on what she owes, or at least reload custom amounts so she could always load the exact amount needed for a given order. She wishes she had a zero balance on her Starbucks Card and feels that the perpetual balance on her Starbucks Card makes her more likely to visit Starbucks than other coffee shops, which she might prefer to do otherwise. She says that when she first signed up for the Starbucks Rewards program and loaded money onto her Card, she assumed that at some point the balance would eventually fall to zero. Now, having seen that that is virtually impossible through the app, she feels that she may have been better off never signing up in the first place. She believes that the way Starbucks has implemented this system and limited customer choice in the app is very "anti-customer."

3. Haley Ratcliff

Haley Ratcliff, a 27-year-old Seattleite who is currently unemployed, had a different motive for signing up for the Starbucks app. They signed up for the app about a year ago, on a day they were running late at the Sea-Tac airport. Because they were running late, they wanted to order ahead using the mobile order and pay function. Thus, they downloaded the Starbucks app and were automatically enrolled into the rewards program. When they went to pay for their order through the app, there was no option to pay for the order using Apple Pay – their preferred mobile payment method. Instead, they were only given the option to use Apple Pay to load money onto the automatically generated in-app Starbucks Card. They had only wanted to purchase a single beverage, so they loaded the minimum amount -- $10. But because just purchasing a drink would leave a balance on the Card, they decided to order a food item they did not really want in an effort to get the balance as close to zero as possible. They are not a regular Starbucks customer, instead preferring local coffee shops, and knew they would likely not visit Starbucks again. In the end, even after purchasing the food item they did not want, they still had a balance of $0.31 on their Starbucks Card. They would have preferred to tip that balance to Starbucks workers instead of having it "sit there in the app." Instead, they resigned themselves to leaving that small balance perpetually unused – deleting the app altogether.

4. Jackson Hoppis

Jackson Hoppis, a 23-year-old resident of Olympia, has also suffered harm from Starbucks' use of dark patterns. He has been a Starbucks customer for approximately 6 years and, until very recently, used the Starbucks app two to three times a week. He became a Starbucks rewards member at least three years ago, after seeing a promotional email. He initially signed up because he thought the rewards would end up saving him money and for the ease of customizing drink orders via the app, which he could then easily reorder with the customizations already programmed in. He would typically place mobile orders and pay ahead, picking up from the drive-thru window or, if the drive-thru line was likely to be busy, from inside the store. He usually paid with his in-app Starbucks Card, which he periodically reloaded – about every other week – with $25. He did not realize he could reload less than $25 – which is the default reload amount – and would have preferred to reload the minimum amount each time. He did not like having a balance on his Starbucks Card and would have liked the option to split payment in the app. Because there was no option to do so via the app, he did not realize he could split payment if instead of ordering ahead, he ordered and paid at the store instead. He would prefer to do away with the Starbucks Card altogether, seeing no benefit to him of having an intermediary step between his debit card and his Starbucks purchase. He only used the Starbucks Card because it was the way to earn the maximum rewards points per dollar spent. Alternately, he wishes he could reload the specific amount needed to cover an individual purchase. He also experienced trouble with tipping in the app. At first, he did not know there was an option to tip. Eventually, he figured out how to enable notifications such that he would be prompted to tip after placing an order. He wishes he could tip a custom amount or a percentage. Now that he has a home coffee setup, he has a balance of $6.63 remaining on his Starbucks Card that he does not believe he will use. He wishes he could transfer that balance back to his debit card.

5. Brittany Furgason

Brittany Furgason is a 32-year-old customer service agent at Sea-Tac airport, near where she lives. She has been a Starbucks customer for most of her life – since she was about 10 years old. She has been a Starbucks rewards member for several years. Before the Covid-19 pandemic, she was given a physical Starbucks gift card as a present. When she was in a Starbucks store to redeem that gift card, she noticed an advertisement for the Starbucks mobile app that mentioned it was a straightforward and convenient way to manage physical gift cards. So, she downloaded the app and inputted the details of her physical gift card so she could now access it digitally as well. She makes a Starbucks purchase about every other week and virtually always pays with her Starbucks Card via the app because doing so allows her to earn 2 Stars per dollar spent. About half of the time, she orders and pays in person by scanning the app at the cash register because this allows her to access the airport employee discount. The other half of the time, she is in too much of a rush to wait, so she uses the mobile ordering function to place her order ahead of time. She reloads as needed, which she says means she typically reloads every other visit. She always reloads via the app – $25 from debit card (via Apple Pay) at a time, because she never noticed the drop-down menu that allows a user to change the reload amount from the $25 default. She wishes she had known about being able to reload less because at times she is on a tight budget and finds it difficult to spend $25 on Starbucks at a time. To that end, she wishes she could reload custom amounts through the app, so she only had to load the amount needed to cover a given purchase. She does not like having money sitting on her Starbucks Card as opposed to on her debit card, because she could be spending that money in other ways if it remained on her debit card. She has tried to split payment methods in the app before and was displeased that she could not do so. Because she is sometimes on a tight budget, it would be helpful to her to be able to pay via more than one method at a time. She also finds it "unfair" and "annoying" that this results in a system whereby, in order to use small existing balances on her Starbucks Card, she has to reload yet more money onto her Starbucks Card. She described this phenomenon as a "cycle." Though she sometimes wishes to stop being a Starbucks customer, she feels trapped into being one because of the money sitting on her Starbucks Card at any given moment, which she is not willing to let go to waste. The prospect of potentially having to let some amount of her hard-earned money sit unused on her Card "feels unfair."

The harm suffered by these Washington consumers with the Starbucks Payment Platform includes concrete monetary injuries – in the form of continually spending more than desired or intended in multiple circumstances and having unusable amounts of cash "stuck" on their Cards – caused by the deception and manipulation inherent in the dark patterns on the Starbucks Payment Platform.

The Attorney General appears to share these concerns. The office recently took action against a major company that used dark patterns to "den[y] Washington consumers the ability to choose … and profited from that conduct."[57] The Attorney General has also sued multiple defendants for using unfair and deceptive practices to secure involuntary online subscriptions.[58]

As detailed above, the Starbucks Payment Platform involves unfair and deceptive digital dark patterns that effectively trap its customers into prepaying for the company's services. Given the size and prominence of the company and the wide distribution of the app among Washington consumers, along

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[57] Wash. Office Att'y Gen., AG Ferguson's lawsuit forces Google to pay nearly $40M over deceptive location tracking (May 18, 2023), https://www.atg.wa.gov/news/news-releases/ag-ferguson-s-lawsuit-forces-google-pay-nearly-40m-over-deceptive-location. *See also* Complaint, Wash. v. Google, LLC, No. 22-2-01103-3 SEA (Wash. Super. Ct. Jan. 24, 2022), https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/2022_01_24FinalRedactedComplaint.pdf.

[58] *See, e.g.*, Wash. Office Att'y Gen., AG Ferguson wins up to $695,000 in refunds for Washingtonians harmed by lingerie company's deceptive subscriptions practices (June 16, 2023), https://www.atg.wa.gov/news/news-releases/ag-ferguson-wins-695000-refunds-washingtonians-harmed-lingerie-company-s; Wash. Office Att'y Gen., RealNetworks' not-so-free trials result in $2.4 million settlement (May 23, 2012), https://www.atg.wa.gov/news/news-releases/realnetworks-not-so-free-trials-result-24-million-settlement.

with clear evidence of harm to individual Washington consumers, the Attorney General should take immediate action to put a stop to Starbucks' unfair and deceptive conduct and make Washington's consumers whole for the harms it has caused them.

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