LEGAL ISSUES RELATED TO ONLINE ADVERTISEMENT REGULATION

BY

MS. ARPACHON KHAMVAN

AN INDEPENDENT STUDY PAPER SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS (BUSINESS LAW)

GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY

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DECEMBER 2016
Independent Study Paper Title  Problems of Regulations Related Online Advertisement
Author  Ms. Arpakhon Khamvan
Major  Master of Laws (Business Law)
Advisor  Asst. Prof. Dr. Poom Moolsilpa

Faculty of Law, Assumption University approves this Independent Study Paper as the partial fulfillment of the requirement for the Degree of Master of Laws.

Dean, School of Law
(Assoc. Prof. Pornchai Soonthornpan)

Chairman
(Assoc. Prof. Kanathip Thongraweewong)

Committee
(Mr. Wisit Yanpirat)

Advisor and Committee
(Asst. Prof. Dr. Poom Moolsilpa)
Nowadays, improper content of online advertisements has become a crucial issue in Thailand because more and more advertisers initiate various methods to attract internet users by publicizing content that are inaccurate. Advertisements with improper content have been publicized and spread out widely, such improper content may include advertisement with misleading information, exaggerate advertisement, advertisements inappropriate for children, environment, political and etc. These advertisement was not applied by the Thailand laws in all parts. The current Computer-related Crime law may apply only to some circumstances such as forge advertising or false advertisements. The Consumer Protection law of Thailand, however, cannot be applied for online advertisement because the definition of advertisement media does not cover all circumstances of online media related violations. Moreover, the Communication Media Law which include the Print Recordation Law, the Broadcasting and Television Business Law, and the Movie and Video Law of Thailand cannot be applied to online media as well because these law specifically apply for newspaper, print matters, television and radio programmes, and movie or video games and karaoke only. Therefore, the online advertisement in Thailand was not the law to control all the improper content which unfair for the internet users in recently. There was the law which control only part of circumstance and it was the criminal enforcement. The existing laws are not suitable for controlling content of online advertisement and there is a need to screen or retain unfair content of online advertisement for internet users.

From this research, it became visible that the regulation of the United Kingdom related to the UK code of Non-Broadcasting Advertising, Sale Promotion and Direct
Marketing regulation to control online advertisements has been adopted. This Code is a self-regulation system between advertisers where advertisers are entitled to sign an agreement to control the content of online advertisement in same manners as to not deceive internet users. The Code provides a clear definition of advertisement media. It states clearly that the regulation shall cover all non-broadcasting advertising media including electronic media (banner and pop up), spam- email, and others. Moreover, the Code imposes prohibitions that are visibly divided into two parts. Part one is the General Rules which applies to controlling all products and services under any circumstances on online media. The most important issue was for advertisers and products owners to be aware about social responsibility. The second part is the Specific Rules which covers more specific products such as medicine, weight control, alcohol, financial, employment and others.

Therefore, Thailand should be legislate new law to control related online advertisement which using the authority of state statutory conduct. The new law shall apply for only online advertisement related commercial purpose. The product owners and the advertisers shall be obey the law to crate the online advertisement follow the statement of the law. The content shall divide in 3 part, first the general rule to control all products advertising in online media. Second, the specific rule to control the important products or services which include financial, employment, alcohol, insurance, medicine and others in online media. The last is the prohibit products to publicize in online media which match to the other law such as tobacco, gambling, and others. This new law shall change the control system related online advertisement to suitable and effectively for our country.
ACKNOWLEDGE

This independent research study could not have succeeded without the support, recommendations, inspiration and encouragements from many persons. I would hereby like to express my sincere appreciation to the following persons.

First of all, I would like to express my appreciation to the Committee members for their suggestions and support during my research. I am thankful for Assoc. Prof Kanathip Thongrawewong, chairman of the Committee’s recommendations and inspiration for conducting this research. I am also grateful for Mr. Wisit Yanpirat’s support, has been an important drive to me throughout this research by providing suggestions that enables me to create important content and table, as well as, made me understand the problems of online media advertisement more clearly. Last but not least, I would like to express my gratitude and appreciation to Asst. Prof Dr. Poom Moolsilpa, my advisor in this research, who has built my knowledge on the advertisement law system of Thailand, and also provided valuable suggestions to conduct a thorough analysis on the legal issues present in Thailand.

Second, I am thankful faculty of law for all support and activate my independence research to finish. The all faculty officers who suggest the algorithm and coordinate the professors for me.

Lastly, I am really appreciate to my family for all support me to study at Assumption University in faculty of law. And suggest me to focus on doing this research. For all my success in this time, I really thank you for all support and suggestion. All supports, suggestions, inspirations, and encouragements have been very valuable to me, and I have learned to apply them both to my research and my life. It has been a very important experience for me to continually expand my knowledge further.

Arpakhon Khamvan
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Chapter 1

Introduction

1.1 Background and General Statement of the Problems

Recently, advertisements for business purposes have expanded tremendously through various channels including television, radio, and especially the internet. The main purpose for advertisements is to attract audience to consume a products and services. Many times the contents of those advertisements can be misleading or exaggerating, and can be Of harm to the buyers or audience when the quality of the products does not meet with the expectation of the audience or buyer. Not only are buyers wasting their money, but some products can be harmful to the health of the buyer, lead to injuries or even death. For this reason, laws related to mass media have been enacted to restrict the freedom of publicizing certain type of information. Nevertheless, those do not apply to advertising on online platforms and the market of advertising online has become very popular.

The number of spreading deceptive online advertisements has increasing continually. The result is bad and dangerous for internet users particularly children, teenagers, elderly, and etc. Many users were naive and believed the misleading content of the advertisement which led to damaging consequences. The most popular products advertised online include slimming pill product, weight control product, drugs, food supplements, alcohol, insurance, and etc.

Many people have died from drugs or weight control products due to believing the advertisements that was posted online. Of course, those advertisements use beautiful models and make the advertisements seems very believable which attracts people who which to look like that as well. Entrepreneurs create video presentation with models presenting the quality of the ingredients of the product, they present the product with an irresistible promotion and sometimes even state that there is a special promotion for those who buy within a certain timeframe making it tempting for buyers to feel the need that they should buy it without thorough consideration. Teenagers are facing health issues or even die from these products every year which raises concerns
about the safety of internet users as well as the credibility of the product and services promoted online.

For alcoholic beverages we do have regulations screening the content of advertisements that goes television, radio, print matter, and movies but there is no law regulating about advertisements related to alcoholic beverages that have been posted online. A most recent issue involved actors and actresses promoting alcoholic beverage brands on their personal social media platform called “Instagram”. As a public figure, they would have millions of followers including children and the younger generation. Actors and actresses denied that they have received income from promoting such product online and those cases eventually went silence. However, the promoting of those products have already reached the eye of the public which could have impact on children and the younger generations as they feel they have to follow the trend of their idol public figure. The question here is "Are the laws related to product advertisements online efficient enough to protect the safety of the internet users?" It was notable that when actors and actresses promoted the alcoholic brand online, around 19 famous persons posted the exact same alcoholic brand on their personal social media channel at the same time. Nevertheless, there is no law that could be used for this kind of situation.

Advertisements that present attractive job opportunities have also become more commonly known among internet users. Those advertisements provide misleading information making internet users believe that if they would work for such company the job will be easy and the money would be rolling in easily, the catch is that the internet user will first have to pay for a membership which eventually never lead to no such promising profits, moreover, wasting the time of the internet user.

Video sharing on online platform through channels such as YouTube, Mthai Video, and others are also very popular. They would share video clips that can be funny, educational, entertaining, DIY teachings, and etc. However, while watching a video constant advertisements would pop-up in form of banner or short video advertisements. Some advertisements allow you to skip it straight away but there also commercials that you cannot skip. For television programs, it is more systematic, audience knows that commercials will be coming in between the television programs.
Then there are the online program channels which sponsor famous people or Youtube set up channels to promote products and services such as VRZO, Fedfe, Tiger crying, Tubtimtube, and many more. There is no restriction, meaning, that all type of products and services could be publicized through these youtube channels. In addition, these channels sometimes make the product and service seems even more appealing that the short video advertisements. The number of internet users watching these channels is approximately 800,000-1,000,000 viewers per one episode which is a huge number compared to the number of people watching commercials on television. This is the danger that comes from no monitoring the content of online advertisements.

In fact, online marketing is very useful for entrepreneurs to promote their products and services, but misleading advertising has dropped the reliability of such products due to what is being presented. Many people have lost trust in buying products online therefore if online marketing has been more real it may regain the trust issues of internet users.

The process of publishing an advertisement online can be divided into three steps. First, owners of products who would like to promote their products online. Second, production team that transfers the idea of selling a product into forms of writing, visual, with audio and motion advertisement product for marketing communication. Last, the process of posting the advertisements on online platforms for the public. For example, website owners sell spaces on their websites for those who would like to put an advertisement on the website which could come in form of banner or other forms.

In Thailand, advertising is one part of the mass media law which regulates certain limitation rules on "free press" according to the Constitution of Thailand B.E. 2550. Mass media law is divided into printed matter, radio and television, movie and video and advertisement. The laws related to mass media in Thailand include:

1. Printed matter: Print Act B.E. 2550
2. Radio and television: Broadcasting and Television Business Act B.E. 2551
3. Movie and video: Movies and Video Act B.E. 2551

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The law related to television programs "The Broadcasting and Television Business Act B.E. 2551" limits the freedom of broadcasting certain content on air. There are differences between the laws of television advertising and internet advertising. First, television advertisements have a limited time to broadcast a program while there is no time limits for internet advertisements as internet users could watch a program at any time of the day and would have to deal with pop-up advertisements. However, the Broadcast and Television Act stipulates that there shall be commercial in-between the television programs which make it easier for viewers to distinguish the program from the commercials clearly. Only the radio and television media act regulates about advertisement control.

The law that control and monitor advertisements in Thailand is "The Consumer Protection Act B.E. 2522". The advertising of print matter, television, radio, and billboard are enforced under the consumer protection law. It is observed that Section 3 of this Act prescribes that "Advertising Media means a thing as advertising media, such as newspaper, printed matter, radio, television, post and telegram, telephone or sign board but it does not include internet or online media. Therefore, Thailand does not have a law that directly focuses on screening advertisement contents on online media platforms. Thailand only has one law that comes close to overseeing online media advertising which is the "Computer-Related Crime Act B.E.2550". This regulation does not oversee online advertisement contents but rather focus on crimes with offences related to computer data. This law has an objective to punish the person who imports false data, but it does not cover misleading content promoted on online advertising efficiently. Moreover, it punish wrongdoers but does not include how those who have been harmed will be compensated for being a victim.

Therefore, Thailand does not have a law overseeing online advertisement like the other acts. Advertisements that have been posted in false, misleading, or exaggerate manners may impact the decision-making of internet users in buying or trusting the product or service. Different persons may have different judgments based on the quality, information given, brand loyalty of the product. Some persons may

\[2\] The Broadcasting and Television Business Act B.E.2551, Section 23.

\[3\] The Consumer Protection Act B.E. 2522, Section 3.
understand the false information knowingly, but some cannot distinguish true information once the computer graphic make the trick. Before one person pays for a product or service, they have the right to receive the truthful and not ambiguous information regarding the quality, ingredients, and usage of the product and service. Entrepreneurs, of course, benefits from investing in advertisements that make their products more appealing to the public while the consumers are in disadvantage because they have not received information completely. The consumer protection law shall protect the right of the consumer by requiring for companies to provide truthful and unconfused information about a product and service. The regulation shall require entrepreneur and production houses to have the duty to create an advertisement that provide accurate and not misleading information. Comparing our law with foreign regulations such as the one used in the United Kingdom, the UK has an advertising code to oversee broadcast advertising and non-broadcast advertising. UK has a statutory state which controls the advertising industry to provide fairness to consumers and assure that the information of the advertisements is not misleading. Moreover, UK has a self-regulation and co-regulation system that is uses for advertising industry. It is a new model with rules that apply toward all relevant organization excluding the public sector which has the duty to response to the consumers and society.

Recently, there are no cases that illustrate direct impact from advertisements that have been posted online but it can be assumed that the legal gap shall become a problem when it comes to compensating those who have been harmed.

In this regard, this research will aim at studying the issues related to the above mentioned regulations on overseeing and monitoring online advertising in Thailand and compare it with the model used in another country.

1.2 Hypothesis of the Study

In this research, the researcher will assess the legal problems relating the current regulations on advertisements in Thailand that does not include online media. Then, the researcher will elaborate why the current regulations relating print matter, picture, voice, and movie cannot be applied for online advertising media. Last, it will be illustrated that regulations related to online media as they are presently are not
efficient because they would have to include elements of criminal circumstances. Overall, the researcher expects to propose recommendations that could resolve the legal issues by suggesting having a new specific regulation that would be able to also cover advertisements on online platforms under any circumstances.

1.3 Objective of the Study

1. To study the online advertising related regulations from the United Kingdom and from Thailand, including the history and types of online advertising, and etc.
2. To study the regulations related to advertising in Thailand, including the process of enforcement in order to acquire online advertising for commercial purpose.
3. To study the law of the United Kingdom relating to the enforceability of internet advertising.
4. To analyze the problem of the advertising on the internet and solutions to control the content of online advertisements in Thailand more efficiently.

1.4 Study Methodology

The researcher has adopted the documentary research methodology in conducting this research study. This research will examine the history, concepts and types of online advertisements and the internet in Thailand. It will compare the advantages and disadvantages of laws related to online advertising that are presently used in Thailand and the United Kingdom. This research will be conducted by analyzing information from text books, journals, thesis, documents and electronic materials. Moreover, it will also look at the gathered information to provide a comprehensive study regarding the self-regulation used by the United Kingdom in comparison to regulations existing in Thailand.

1.5 Scope of Study

This independent research will study the problems of online advertising used for commercial purposes in Thailand. The research will look at the relevant regulations in Thailand which include the Consumer Protection Act B.E. 2522, Print Recordation
Act B.E. 2550, Broadcasting and Television Business Act B.E.2551, Movies and Video Act B.E.2551 and compare it with the laws of the United Kingdom, namely, Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code. Moreover, the researcher will also look at the Computer-Related Crime Act B.E.2550.

We will be focusing on the scope where online advertising has been used for commercial products, and the role of product owners and advertisers who are not directly involved in the process of publishing an advertisement online. Eventually, the researcher hopes to be able to make recommendations that protect internet users from becoming victims of misleading advertisement information by pointing out that it could reflect the credibility and reliability of products promoted on the online market.

1.6 Expectation of RStudy

1. To understand the concepts and types of online advertising.

2. To understand the present regulation relating to advertising in Thailand and the difficulties if it were to be used with online advertising issues.

3. To understand the UK advertising laws and their implication toward online advertising.

4. To identify the problem of online advertising and propose resolutions that can be applied for the enforcement of regulations related to online advertisements in Thailand.
Chapter 2

History, Concept, and Theory related to Online Advertisement

In Chapter II, the research shall present information and the history of the internet and advertisement. In addition, we will talk about the long evolution of the internet, and study the internet system. Chapter II will provide a more thorough study on what exactly advertisement means and how they have been categorized. This will become the fundamental basis to help understanding the concepts of the regulations in the following chapters more clearly.

2.1 The Meaning and the Evolution of the Internet

The internet has become a new way of communications that connects people with one another from all around the world. While the use of internet is increasing with time, business corporations show no delay in stepping up in the online world as well. One would notice that more and more advertisements are spreading out throughout the internet. The researcher would like to begin by discussing the history and evolution of the internet before examining online advertising in more details.

2.1.1 Meaning of the Internet

The internet can connect two computers anywhere in the world with one another via dedicated routers and servers. The term Internet comes from the term "International Network" or "Inter Connection Network". The Internet enables digital data to be transported and transferred between computers. When two computers are connected via internet, they information such as text, graphics, voice, video, and computer programs can transferred and received. Each Computer has an individual IP Address which can be compared to a telephone number. Information is being sent and delivered through this IP Address of the computer.

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The internet can transfer all kinds of information through Wireless local area networks (WLAN), telephone lines, and satellite. WLAN is an intermediate network that links computer with the internet service provider via TCP/IP (Transmission Control Protocol/Internet Protocol). The general procedure for transferring data is that information is converted into codes.

In the year 1989, Tim Berners-Lee created the first "World Wide Web" (WWW) named “http://info.cern.ch”. Website is the space to keep data and news on the internet, the users can get the information on those webpages. For example, on “www.youtube.com”, users can upload or share their videos or give permission to other users to allow them to watch the video. The “Google” webpages allows advertising of products by adding product information and keyword to Google. Customers could search for what they are looking for and contact the user who posted about a product online directly. Moreover, the internet is also being used in other ways such as electronic mailing which has pretty much replaced letter writing. Many people are using the internet on a daily life basis because it is very convenient and simply to use. People can send information to another person on the other side of the world and that person would receive it instantly although living in different time zones. People can do researches of information, and even real-time chat due to new technology. The number of internet users in 2015 was about 2,925,249,355 users. Thailand alone had about 27,653,927 internet users in 2014 and the number of internet users is increasing continually. Nevertheless, there are also consequences that followed with the existence of internet which affect people's life. While the number of people joining the internet is increasing, Business Corporations are reaching out to consumers who are internet

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users and post attractive advertisements, may it be for good or bad reasons. We will discuss the negative impacts that come with online advertising. An example would be that there are some countries that strictly prohibit companies to advertise about alcohol beverages, nevertheless, there are companies that still launch their advertisement on the internet.

The bottom line is that the internet has become a tool that is used in people every days life, it is more convenient for people to connect to one another, attracts entrepreneurs to promote their product or services online and nothing can be done to protect or make internet users feel safe because there is no kind of control or screening mechanism to oversee this issue.

2.1.2 The Evolution of the Internet

The internet was first used in 1950 when Russia sent a satellite named "Sputnik" into space. This event pushed the American to develop their own space projects by setting up the Advanced Research Projects Agency (ARPA).

In the period of 1960's American space project decided to confederate from the American's Department of Defense, but ARPA still work continually. The military can connect computers across the United States by using special feature. ARPA experimented with the connection of computer networks by giving grants to multiple universities and private companies to get them involved in the research.

In 1969, ARPA changed its name to the Defense Advanced Research Project Agency (DARPA). The pilot network went online with the connection of a four-node network via 56 Kbps circuits. This new technology proved to be highly reliable and led to the creation of two similar military networks, MILNET in the U.S. and MINET in Europe. Thousands of hosts and users connected their private networks.

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1° Ibid., p. 12.
(universities and government) to the ARPANET which became the beginning of "ARPA Internet"

By 1985, the ARPANET was popular to be used in the National Science Foundation (NSF) and began improving the phases of improving the NSFNET. The NSFNET consisted of multiple regional networks and peer networks (including NASA) which became a major backbone that constituted the core of the overall NSFNET.

In its earliest form, in 1986, the NSFNET created a three-tiered network to connect campuses and research organizations to regional networks. It was connected by a main backbone linking six nationally centers.

In 1990, Merit, IBM, and MCI started a new organization known as Advanced Network and Services (ANS). Merit Network's Internet engineering group provided a policy routing database and routing consultation and management services for the NSFNET, whereas ANS operated the backbone routers and a Network Operation Center (NOC).

By 1991, data traffic had increased extremely, which need upgrading the NSFNET's backbone network service to T3 (45 Mbps) links. The original NSFNET was worked efficiently to backbone and for the people.

2.2 The Concepts of Advertisement

In the most recent years, one must admit that it is more difficult to avoid advertisements these days as it has become a part of all forms of mass communication such as newspaper, radio, television, or online media. Before studying the regulation of online advertising, we should first understand the concept of advertising according to mass communication.

2.2.1 The Meaning of Advertisement

Thailand has legislated the meaning of advertisement in the Consumer Protection Act B.E. 2522. It defines "advertisement" as to include any act which, by whatever means, causes the statement to be seen or known by an ordinary person for

trading purposes. Section 3 of the Medical Device Act B.E. 2551 states that advertisements shall be described as "any activity by any means to let people see, hear, or know of the statement for commercial purpose, including sale promotions." No other regulation has defined the meaning of advertisement.

In the view of publicists, the term "Advertisement" means the form of communication without using persons. It is the organization regarding products, services or ideas by fostering a name. This meaning came from the American Marketing Association (AMA). The characteristic of advertisement has been explained as follows:

- "AR Oxenfeldt and C. Swan states that "Advertising is persuasive communication from the seller to the buyer without a go in private."" 

- "Maurice I. Mandell defined it as "advertising refers to a form of promotion through advertising. Individuals and non-paid advertising by sponsors. The ad has a different meaning from the promotion. Sales of other forms, such as sales staff and sales promotion and so on."

- "SW William Pattis said "advertising means the communication in any form is intended to encourage those who have. Potential acquisitions and Promotion of products and services. Including the creation of the referendum act to cause political support for ideas or opinions. Or various causes and actions so that public opinion amenable. Or act in a way that pleases advertisers."

- "Dr. Sari Wongmontar said the advertisement is the communication activity to persuade the consumers accept the goods and services of the business advertisement. The advertisement use the reason, strategy and imagine through the picture, contents, and others of the advertisement to the consumers."

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12 Consumer Protection Act B.E. 2522.

13 The Medical Device Act B.E. 2551.


15 Ibid.

16 Ibid.
The Marketing Association of the Americans (AMA) gives the meaning of advertising to be paid in various forms of the patron (sponsors) to promote products, services or support concepts. These offers may not directly apply to individuals.18

From all of these, we could summarize the meaning of "Advertisement" to be a promoting of products, services or other issues in any way such as written, audio, visual or symbolic communication as well as media newspaper, television, radio, internet and other forms for commercial purposes.

2.2.2 Types of Advertisement in Marketing

There are many forms of advertisements by first targeting an audience, may it be a National Advertisement, Regional Advertisement, and Local or Retail Advertisement.19 Secondly, one has to consider whether it will be a Pioneering Advertisement, Competitive Advertisement, and retentive Advertisement.20 Third, regarding the advertisers, will it be a Government Advertising, Political Party Advertising, Rental Chain Advertising and Commercial Marketing Association Advertising.21 The last is communication media. This research will divide the type of advertising for further explanation, describing the media communication that is divided into 4 types as following:

1. Print Matter Advertising

The advertisement in the form of print matter advertisement was publicize by using word, number, symbol, picture and etc. in these media as follow:

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18 Rattanakosin University, Ibid.
20 Ibid., p. 18.
21 Ibid., p. 20.
1) Newspaper

Newspaper advertising can promote your business to a wide range of customers. Display advertisements are placed throughout the paper, while classified listings are under subject headings in a specific section. You may find that a combination of advertising in your state/metropolitan newspaper and your local paper gives you the best results.

2) Magazine

Advertising in a specialist magazine can reach your target market quickly and easily. Readers (your potential customers) tend to read magazines at their leisure and keep them for longer, giving your advertisement multiple chances to attract attention. Magazines generally serve consumers (by interest group e.g. women) and trade (industry/business type e.g. hospitality).

If your products need to be displayed in color then glossy advertisements in a magazine can be ideal - although they are generally more expensive than newspaper advertisements.

Magazines do not usually serve a small area such as a specific town. If your target market is only a small percentage of the circulation, then advertising may not be cost-effective.

3) Direct Mail, Catalogues and Leaflets

Direct mail means writing to customers directly. The more precise your mailing list or distribution area, the more of your target market you will reach. A direct mail approach is more personal, as you can select your audience and plan the timing to suit your business. A cost effective form of direct mail is to send your newsletters or flyers electronically to an email database. Find out more about direct mail.

Catalogues, brochures and leaflets can also be distributed to your target area. Including a brochure with your direct mail is a great way to give an interested customer more information about your products and services. Learn more about leaflet marketing using letterbox drops and handouts.
4) Online Media

Online media is a new form of media communication, the number of advertising industry increase rapidly. Online advertisements can advertise print material on websites without printing it out on paper. People have changed behaviors after introduction of technology that develop constantly, Nowadays, people read news, magazine, journal, or other written materials online. Advertisements in form of printing can spread easier toward many websites at once.

2. Voice Advertising

The voice advertisement is one type of advertisement which publicize by using voice to explain and persuade people to interest the products or services. It was publicize in these media as follow:

1) Radio

Advertising on the radio is a great way to reach your target audience. If your target market listens to a particular station, then regular advertising can attract new customers.

However, sound has its limitations. Listeners can find it difficult to remember what they have heard and sometimes the impact of radio advertising is lost. The best way to overcome this is to repeat your message regularly - which increases your costs significantly. If you cannot afford to play your advertisement regularly, you may find that radio advertising does not generate strong results.

2) Others

In the present, on-air radio stations can also be played through the internet. Music radio stations will be having breaks for introducing voice advertising from time to time. These radio stations can advertise both visual and voice messages since users would be able to see the advertisements at the same time as the speaker has promoted it. People can use smartphones or tablets to listen and watch radio online from anywhere.
3. Picture Advertising

The advertisement which using picture to publicize may combine with the word and show the picture to appeal the people's interesting. This is the example of media which publicize picture advertisement.

1) Directories

Directories list businesses by name or category (e.g. Yellow Pages phone directories). Customers who refer to directories often have already made up their mind to buy something; they will only need to decide who to buy it from.

The major advantage of online directories is that if you change the name of your business, the address or telephone number, you can easily keep it up to date on an online platform. You can also add new services or information about your business straight away. If your target market uses print and online directories, it may be useful to advertise in both, although print directories are being used less.

2) Outdoor and Transit

There are many ways to advertise outside and on-the-go. Outdoor billboards can be signs by the road or hoardings at sport stadiums. Transit advertising can be posters on buses, taxis and bicycles. Large billboards can get your message across with a big impact. If the same customers pass your billboard every day as they travel to work, you are likely to be the first business they think of when they want to buy a product.

Even the largest of billboards usually contain a limited amount of information; otherwise, they can be difficult to read. Including your website address makes it easy for customers to follow up and find out more about your business. Outdoor advertising can be very expensive especially for prime locations and supersite billboards.

3) Online

The online system is the most popular communication method for advertising industry. There are many picture advertising products on websites. Picture
advertising is also the best way to advertise something clear and cheap in the same way.

4. Video or Movie Advertising

Video or movie advertising is the only one which has the limited media to publicize. Because it must use the tool to show the motion picture, so that the video or movie advertisement can publicize in this media as follow:

1) Television

Television has an extensive reach and advertising this way is ideal if you cater to a large market in a large area. Television advertisements have the advantage of sight, sound, movement and color to persuade a customer to buy from you. They are particularly useful if you need to demonstrate how your product or service works.

Producing a television advertisement and then buying an advertising slot is generally expensive. Advertising is sold in units (e.g. 20, 30, 60 seconds) and costs vary according to:

(1) The time slot
(2) The television program
(3) Whether it is metro or regional
(4) If you want to buy spots on multiple networks.

2) Online Media

Video and movie advertising online is a new channel for everyone who has a product and service they would like to promote or if they would like to make an announcement. Many bigger brands in Thailand have changed to advertise products and services online because it is cheaper than advertising via television or radio, no rules are applied, no limitation of content or time. They will produce a short advertisement and upload it on a public website with no need for displaying a heading of the advertisement. People generally watch it until the end and know that it is an advertisement. Therefore it can be said that online advertising has quite some freedom to advertise in whatever way they can, with no time restriction and can be about anything.
2.3 Online advertising

This part explain the information related online advertisement which including the short history of online advertisement and the type of online advertisement as follow:

2.3.1 The History of Online Advertising

The beginning of online advertising began with a post on May 3, 1978 which came in a form of spam email. There are about 400 users who have received this spam email from a man named Gary Thuerk, he was known as the father of spams. He was the marketing manager of Digital Equipment Corporation. He emailed an invitation to users to try out his product.

![Image of email spam](http://www.adpushup.com/blog/the-history-of-online-advertising/, p. 1, (last visited 25 October 2559)).

After that in 1993, Global Network Navigator, the commercial website sold a clickable advertising or banner advertising. It sold the banner advertising to a law firm named Heller Ehrman White & McAuliffe. GNN was basically an online information portal that consisted of a news center and it also acted as a product catalog.

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\(^{23}\) Ibid.
By April 1995, advertisers like Mastercard and Zima were paying GINN $110 to $11,000 per week for advertising spots.

However, it was in October 1994, when a team called Hotwired, the first commercial web magazine created special sections on the website for banner advertisements to be displayed on. AT&T was the first company to buy it from Hotwired.

![Hotwired Banner](image)

**Picture 2: Hotwired Banner**

After that, they have developed double-click banner advertisements. The Double-Click is an online ad-related-service that was provided by the agency. It would record internet users' interest and behavior.

Pop-Up and Pop-Under advertisements has been popular in the past and remains popular to present date. Although the use of popup advertising can be tracked back to Late 90s, they became really prevalent during this period since they were said to be more effective and harder to ignore than static advertising.

In 1999, Pay-Per-Click began to become a more common tool for the using online advertising industrial. The advertisers pay for the advertisements when users have clicked on the banner advertisement and watch the advertisement completely. The famous website “Google” also uses pay per click. Google has an income of about 96% from advertisements. Google got the idea of Pay-Per Click from Goto.com. Bill Gross created a model named Paid Placement Model (PPM), and later the Yahoo website also applied this model.

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24 Ankit Oberoi,

25 Ibid.
In 2008, social media changed the advertising industry. The Facebook website has begun including advertisements and combined it with viral marketing. It was advertised in platform of “Beacon”. It focused on viral brand massaging where the users will share and advertise about their product and service by themselves. Moreover, Facebook advertising can destine the population by the languages and radius of the users in order to find a particular product or service. In 2010, Facebook shut down Beacon. It then introduces social context metrics to its analytics.

In present the number of online advertising has increased tremendously since there are many channels that one could choose from to advertise their product on including Facebook, or Youtube. Moreover, more and more popular websites also provide spaces for advertising products online. Therefore, it has become the most efficient approach for the marketing industry. We can definitely assume that this trend will increase continually with time.

2.3.2 Type of Online Advertising

It can be said that online advertising is better than advertising products on the radio, television or in printed matter because every person can publicize their product and service themselves. For advertising on radio, television and printed matters, entrepreneurs are usually the one who produce an advertisement to promote a product or service. Online advertising gives customers a wider range of information that customers can base their decision on e.g. Review section where actual users can

~Ankit Oberoi, Ibid.
comment about the product or service, or the seller themselves can review a product or service. For example, when advertising about cosmetic products, generally, a beauty blogger would explain the qualification of the product, as well as, use it for presenting how it is being applied and shows before-and-after use of products images. Sometimes they will compare the product with many other similar products to help the audience to decide which cosmetic product best to buy. Entrepreneur were also fast in adjusting and by saving cost for expensive advertisements on television and radio, they have started by promoting their product in sending free sample of the cosmetic product to beauty bloggers for reviewing it online.

When looking at the types of advertising online, it is clearly visible that individuals and entrepreneurs have both used the online advertising approach more commonly as it is easier to reach a wider range of audience. The researcher would like to discuss the four forms of online advertisements more thoroughly as follows:

1. Written Advertisement

First of all, a written form of advertisement refers to that the advertisement writes something in letter and posts it online. There are different types of websites depending on the content such as the newspaper Thairath which has a digital version at www.thairath.com, social media websites including Facebook, Twitter, and Instagram, or entertainment websites like www.sanook.com or www.mthai.com, and many more. These webpages generally have spaces for banners, the web master or administrator of those websites will be the one choosing an advertisement to be published on their website.

Picture 4: Example of a written advertisement on social media websites
Secondly, because there are many forms of written advertisements, sometimes they come in the form of reviewing a product, post sharing on social media or a combination with visual images or video clips to make the advertisement more appealing to internet users. The Pantip website is considered to be one of the most famous websites used in Thailand. Most people go to this website when they want to find reviews on products or services and share those reviews on social media.

![Pantip Website Screenshot](image)

**Picture 5: Example of a written advertising in the form of reviewing products**

Third, search engine website, there are many search engine websites such as Google, Yahoo, Search, Ask, and etc. These website search engines have been of tremendous help for the researcher to obtain a wide range of information comprehensively. When someone wants to share information, knowledge, product, or service, they post it onto the internet for other internet users to see. Search engines make it easier to find information by putting keywords into the search bar. Within seconds all information in relation to the keywords will show may it be such information you were looking for, products, services, or specific things.
2. Voice Advertisement

In the past, radio usually broadcast through radio wave with someone speaking on-air for the radio audience. Once radio has become popular, people started recording voices promoting products or services and played those advertisements during breaks of usual radio program.

Most recently, streaming audio would be used for listening to online radio. Streaming means that a broadcasted voices transfers from one computer to the other computer via internet. Online radio also has recorded advertisements of brands or products which will be streaming online through radio waves. Voice advertising is still popular to be used among entrepreneurs because the number of people listening to radio in their car continually increase. During rush-hour, people would usually listen to the radio in the car therefore it is still effective in the views of entrepreneurs.

3. Picture Advertisement

Unlike the general way of communication, the online platforms are more flexible in posting advertisements on any space on a website. There are many ways that an advertiser can create an advertisement for publishing. Among the best way to attract audience are the visual image advertisements where it is easier for the audience to understand the qualification of a product or service.

First, there are the visual image advertisements that come in the form of banner ads and that pop-up once an internet user opens a website.
Second, while watching a video clip on Youtube, picture banners may pop-up with visual banners from time to time.

Picture 8: Example of pop-up picture advertising

Picture advertising is still very popular among advertisers because it is very influential toward the audience. Picture can show the example of the product clearly more than writing advertising. Therefore, advertisers usually prefer the use of visual images and words to explain products and services.

4. Video or Movie Advertisement

Video advertising is the most popular advertising in the online social, because video is the best way to access users. It very useful to show the picture, explain by voice and add writing word. It is easy to understand the video advertising and attract.
more than the picture of writing advertising. There are many website allowed the advertisers upload the advertising and link to other website, Youtube is the first choice for the advertiser. It is famous and popular to the users. However, pop up ads was used in video advertising mostly because it attracts users. The advertiser can pay for video advertising to force the users watch advertising full time or the advertising which the users can skip it.

The famous brand was limited by television in condition of time, rule, wording change to promote the products and services in online system because online advertising has not regulation or limitation like the television program.

Picture 9: Example of video advertisement on Youtube website
Chapter 3
Laws Related to Controlling Online Advertisement

In chapter III, the researcher will explain the law relating to advertising used in Thailand in relation with the internet which oversees and control online advertising. It will further discuss the enforcement bodies, both; from the private and public sector that oversees advertisements and internet in Thailand. In the last part of this chapter, the researcher will look at relevant regulations used in the UK.

3.1 Laws Related to Advertisement in Thailand

According to the Constitution of the Kingdom of Thailand B.E. 2550 under Section 45, a person shall enjoy the liberty to publicize unless a regulation states certain limitations.27 Advertisement is considered to be a mass communication method because it communicates its message toward a wide audience and does not specifically address one person only. The Thai Constitution also regulates under Section 56 that a person shall have the right to get access to public information. Every advertisement that comes in a form of mass communication approach, gives human the right to be informed clearly which would include information on quality, qualification, advantages, and disadvantages of a product and service. They have a right to know whether the information is part of an advertisement or not. Nevertheless, Section 45 paragraph 2 stipulate for some restrictions regarding the liberty to publicize.

3.1.1 Advertisement Laws in Thailand

Advertising is one form of mass communication which is the transmission of information to large number of people through mass media. Under the Constitution of the Kingdom of Thailand under Section 45, one is free to publicize if

27 The Constitution of Thailand B.E. 2550, Section 45.

it does not fall under the restriction stated in paragraph 2 of the same section.  

There restriction or limitation regarding the regulations on the issue of right to freedom, the researcher would like to group as following:

1. Printed Source Law

For printed matters, there is a Printing Recordation Act B.E. 2550 (2007) that indicate the limitation of freedom to printed matters. This law aims to control print matters and newspapers. The legal definition of print matter is notebook, book, paper, or other object which are printed in multiple copies. The legal definition of newspaper is a printed publication which is distributed in a certain frequency continually and includes magazines, journals, and other printed matters. Print matters and newspaper that are manufactured by printing machine generally show the alphabet, picture, number or other.

The Printing Recordation Act stipulates the following,

1) The Qualification of the publisher and the advertising publisher under Section 7

The Constitution of the Kingdom of Thailand B.E. 2550 (2007), Section 45 paragraph 2 "The restriction on liberty under paragraph one shall not be prohibited except by virtue of law, specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity reputation, family or privacy rights of the person, maintaining public or good morals or preventing the deterioration of the mind or health of the public."


Ibid., p. 102.

Printing Recordation Act B.E. 2550, Section 7 "A printer or publisher of a printed matter printed and distributed in the Kingdom must have the qualifications and not be under any of the prohibitions as follows:

(1) being not less than twenty years of age;
(2) having a regular domicile in the Kingdom;
(3) not being an incompetent person or a quasi-incompetent person;
2) The legal conditions that the publisher must comply with

3) The newspaper publisher has to inform the responsible counterpart about the print

4) The qualification of the newspaper editor

In Thailand, the Police Commander in-Chief is the only public organization to control print matters that import or enters the country from abroad. The Police Commander has the authority to prohibit illegal print matters from entering Thailand.

It is interesting that the Printing Act .E.2550 only focus on the qualification of the publisher rather than on the types of advertising in print matters or newspapers that are permitted. For this reason the content of print matters and newspaper will need to be in compliance with the Consumer Protection Act B.E.2522.

2. Radio Broadcast and Television Law

In the past, the Radio Broadcast and Television Act B.E. 2530 and the Radio Act B.E. 2504 controls information that get broadcasted on radio and the frequency. Once, the Constitution of the Kingdom of Thailand B.E. 2540 became effective; transmission frequencies for radio or television broadcasting and telecommunication are national communication resources for public interest. The Constitution initiated for a public organization to be set up to control and monitor radio frequency related content; this has been stipulated in the Act on Organization to Assign Radio Frequency and the Broadcasting and Telecommunications Services B.E. 2543. These regulations cover radio broadcast, television and telecommunication.

(4) not having been sentenced by a final judgment to a term of imprisonment, except where having been discharged for a period of not less than three years, or except for an offence committed through negligence or a petty offence. In the case where a juristic person is a printer or a publisher, a director, a manager or other representative of such juristic person must also have the qualifications and must not be under any of the prohibitions under paragraph one.

33 Printing Recordation Act B.E. 2550.

After the Constitution law B.E. 2550 came into effect, became effective, it was required to obtain certificates for the use of radio frequency according to the conditions of the protection and transmission frequencies for radio or television broadcasting under Section 47. The Act on Organization to Assign Radio Frequency and the Broadcasting and Telecommunications Services B.E. 2553 specifies that the Independent Entity to control and operate on the allocation of radio frequency is called the Committee of Radio Broadcast Television and Telecommunication Nation.

The Broadcast and Television Business Act B.E. 2551 include advertisement monitoring. Section 20 and Section 21 specifies about Type 1 and Type 3 licenses that cannot be advertised for business income purposes while Section 23 allows advertising for business income purposes. However, Section 23 sets rules

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36 The Broadcasting and Television Business Act B.E. 2551, Section 20 Paragraph 2 “In operating the sound broadcasting business and television business, the licensee under Type Two Public Services may generate revenue from advertisements sufficient only for the business operation without emphasis on profit making.”

37 Section 21 “In operating the sound broadcasting business and television business, the licensee authorized to operate community services may not generate revenue from advertisements”.

38 Section 23 “In operating the business services, the operator may proceed to generate revenue from advertisements, business service provision, collection of subscription fees or any other means.

For the operation under paragraph one with an application of advertisements and business service provision, the Commission shall have the power to prescribe in the Notification the criteria of the nature and the maximum amount of time for advertisements and business service provision, which shall not exceed twelve and a half minutes per hour and the total amount of time for advertisements for a whole day shall not exceed an average of ten minutes per hour.”
on the limitation and the frame of time information can be advertised for broadcasting. Section 23 allows the Thai Broadcast and Television Committee to decide on the appropriate characters and time an advertisements can be broadcasted but limits that the advertisement cannot be exceeding 12.5 minutes/per hour and shall not be publicize longer than 12 minutes/per hour/per day.

Because of this, the Broadcast and Television Business Act B.E. 2551 is the only regulation of mass communication that can be applied here in relation to overseeing broadcasted advertisements. Nevertheless, it further states that it shall only cover only radio and television advertising; it cannot be adapted or used for other field media including online advertising.

3. Movie and Video Law

When the Movie and Video Act B.E.2551 came into force it terminated the previous Movie Act B.E. 2473. This act defines the meaning of motion picture which means that a thing has been captured in a form of videotape, pictures or voices which shows sequences of motion pictures in consistent manners; however, it does not include video which are karaoke or games. Thai Motion Picture is a cinema which uses Thai language.

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For the operation under paragraph one with an application of subscription or collection of other service fees, the provision of section 28 shall apply, mutatis mutandis.

The licensee may change the rate of subscription fees or service fees and conditions of service provision of the licensee subject to the criteria prescribed in the Notification by the Commission under paragraph three, but this shall not affect the rights of the subscribers within the period under the existing agreement.

In prescribing the criteria in the Notification under paragraph two and paragraph three, the Commission shall take into account the cost of service provision and fairness brought to competition among the different types of licensees as well as fairness brought to both the licensees and the consumers."

The public organization has the authority to control created motion picture or movies, control the content of the movie, control the schedule of movie screening, and where the movie will be showed.

1) Movie or Motion Picture

(1) Controlling of movie creation: a producer will have to seek for permission from the movie and video committee and the Office of Tourism Development. The producer will need to submit the screenplay, plot, and outline of the movie to the committee. However, the regulations stipulate that such procedure only applies to foreign producers who wish to create a movie in Thailand.

(2) Controlling the content of the movie: the regulation specifies that creators cannot create a motion picture with illegal content which means that the content shall not contrary to public orders, good morality, or related to public security. The creator can submit a movie or video for consideration to the committee before creating it.

(3) Monitoring Movies that are in Showing: the relevant regulations specify that before a movie screening, rental, exchange, or sale in the country, one must first obtain approval from the Committee.

The committee has the authority to categorize the rating of a movie, whereas there are 7 rating, as following:

a. Movies promoting learning and watching
b. Movies appropriate for all ages of people.
c. Movies appropriate for ages over 13 years.
d. Movies appropriate for ages over 15 years

(4) Controlling the export of movies to another country: the movie creator or exporter shall be required to ask permission from the committee before a movie can be exported. However, there are some type of movies that do not need to be requested to ask for permission by the committee before exporting:

4° Kanathip Thongrawewong, op.cit., p. 432.
a. The committee permits foreign movies to be created in Thailand.

b. News or personal movie

c. Movie screening, rental, exchange, or sold in Thailand including movie advertising that are permitted by the committee.

d. News, reality shows, personal movies, public organizations or state enterprises' movie creation for an international movie festival, television movie that are permitted under the Radio Broadcast and Television Act.

e. Controlling the venues to screening a movie: Regulation specifies clearly that a movie has to be screened in the cinema only. The movie producer must request for a permission from the Movie and Video Committee, such permission shall also include obtaining a license that has the limitation period of 5 years.

2) Video

(1) Just like movies, videos are also controlled by the regulations. Public organizations have the authority to control the content of videos, how the videos will be displayed, exported to another country, and control venues that have been set up for video businesses. The regulation prohibits content of video and advertising to consist of illegal content. The content shall not be in contrary to public order, good morality or public security. If a creator is not sure whether part of the content has illegal material, they could submit it to the committee for consideration before production.

(2) Controlling video screening: the regulation specifies that video and video advertising that are displayed, for rent, for exchange, or sale in the Kingdom, must obtain permission by the committee first. Only personal videos, or videos created by public organizations or public enterprises that do not have the intention to display a video in public shall not require obtaining permission.

(3) Controlling the exporting of videos to foreign countries.

(4) Controlling the venues of producing a video.

It can be noticed that the definition of media advertisements has only be set out in Section 3, when discussing about movies and video media which are a form of mass media, one can see that they rather focus on how one is required to
obtain a permission from the committee before a production of a movie or video can take place. There is no prohibition on the enforcing of related advertising directly. This also excludes online advertising.

4. Advertisement Law

1) Thailand Criminal Code B.E. 2499 Section 271 state that "Whoever, selling the goods be any fraudulent and deceitful means in order to deceive the buyer as to the origin source, nature, quality or such goods quantity, if such act not constitute cheating and fraud, shall be imprisoned not out of three year or fined not out of six thousand Baht, or both."

It is interesting to note that only very few people use this provision regarding misleading advertisements. The reason why one would want to avoid applying it may be because it delegate a criminal offence which shall include that the offender defrauded the nature, quality and quantity of a product. We can see that sometimes advertisers do not really publicize about the way of production, nature, quality or quantity, but publicize the result that could follow the use of a product and service. Moreover, this regulation is not conformed to the right to know principles of human right.

2) Consumer Protection Act B.E. 2522 Section 22 to 29 regulates about consumer protection where advertisements may be unfair to consumers. This

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41 Criminal Code of Thailand B.E. 2499.

42 Consumer Protection Act B.E. 2522, Section 22 "An advertisement may not contain a statement which is unfair to consumers or which may cause adverse effect to the society as a whole; that is, notwithstanding such statement concerns with the origin, condition, quality or description of goods or services as well as the delivery, procurement or use of goods or services.

The following statements shall be regarded as those which are unfair to consumers or may cause adverse effect to the society as a whole:

(1) Statement which is false or exaggerated;
regulation set limitation to the freedom of publicizing about normal products and services. The objective of the consumer protection act is that it requires advertisers to publicize products with fair statement to consumers. The statement must be true, clear, not exaggerated, and shall not lead to misunderstandings about the product and service. It shall also not encourage the commission to permit to any unlawful or immoral acts or national culture which could affect the unity of the country. The advertising shall not be publicized in a way that it may be considered harmful toward consumer's physical or mental health. This regulation protects consumers only when it comes to advertisements about products and services. Apprise advertising, referring to, advertising that is not meant for sale, is not included under this regulation. For example, Mr. A publicizes a picture showcase, and there is no need to pay for registering or entering. The definition under the consumer protection act does not cover this form of advertising.

Section 3 of The Consumer Protection Act B.E. 2522 "advertising media means a thing as advertising media, such as newspaper, printed matter, radio, television, post and telegram, telephone or sign board." It does not have internet media in the definition. Therefore, it cannot be applied for online advertising.

3.1.2 Organizations controlling Mass Communication in Thailand

Advertisers in Thailand have the right to publicize freely under the Constitution of the Kingdom of Thailand. Nevertheless, limitations have been set out

(2) Statement which will cause misunderstanding in the essential elements concerning goods or services, notwithstanding it is based on or refers to any technical report, statistics or anything which is false or exaggerated;

(3) Statement which is directly or indirectly encouraging the commission of an unlawful or immoral act, or which adversely affects the national culture;

(4) Statement which will cause disunity or adversely affects the unity among the public;

(5) Other statements as prescribed in the Ministerial Regulation.

A statement used in the advertisement which an ordinary person knows that it is not possible to be true is not prohibited for use in the advertisement under (1).”

43 Consumer Protection Act B.E. 2522, Section 3.
in regulations such as the Print Act B.E. 2550, the Organization of Allocate and Control Radio Frequency Television and Telecommunication Act B.E. 2553, the Movie and Video Act B.E.2551, and the Customer Protection Act B.E. 2522.

1. Printed Matter

Printed matters are both controlled under public and private organizations. Printed matters and newspaper are controlled by the Royal Thai Police according to the Printing Recordation Act B.E. 2550. However, the Royal Thai Police only has authority to prohibit printed matters that contain content regulated to insulting the Thai Monarchy, affects public security, public order, or good morality to the Kingdom of Thailand. The public organization under this regulation is the Advertising Committee which screens content before it gets publicized. Nevertheless, there is no public organization that directly monitors information of written advertising. Although the Printing Recordation Act B.E. 2550 regulates on advertising but the police do not have the authority to enforce it.

Private organizations such as the National Press council of Thailand, the Thai Journalists Association, and Confederation of Thai Journalists control newspapers. They cannot control any other form of printed matter. These organizations usually comprise of members working in the newspaper business. They usually create ethical values among themselves which members comply with and although are not laws that in case of breach will be punishable. It is known as the ethical values of journalism in order to control the content of the newspaper among one another.

2. Radio Broadcast and Television

Radio broadcast and television is being monitored by the "Act on Organization to Assign Radio Frequency and to regulate the Broadcasting and Telecommunications Services B,E 2553". This law is related to radio frequency and the qualification to obtain a license. Although this act does not specify about advertising, there is still a Broadcasting and Television Business Act B.E. 2551 that
stipulates time restriction of an advertisement in-between programs in Section 23. This law was controlled by the Office of the National Broadcasting and Telecommunications Commission (NBTC) which is an Independent Converged Regulator has the authority to control the programs and advertisements of television.

The first private media-related association is the Advertising Association of Thailand (AAT) who follows a code of conduct and ethical principles as agreed among the associations. The AAT makes monthly schedules to screen advertisements on public television, particularly, channel 3, 5, 7, and 9. Since Thailand improved visual signals and converted normal television to digital television, not only did the number of channels increases with this but the number of advertisements on through this channel grew as well.

Broadcast and Television Business Act, Section 23 "In operating the business services, the operator may proceed to generate revenue from advertisements, business service provision, collection of subscription fees or any other means.

For the operation under paragraph one with an application of advertisements and business service provision, the Commission shall have the power to prescribe in the Notification the criteria of the nature and the maximum amount of time for advertisements and business service provision, which shall not exceed twelve and a half minutes per hour and the total amount of time for advertisements for a whole day shall not exceed an average of ten minutes per hour.

For the operation under paragraph one with an application of subscription or collection of other service fees, the provision of section 28 shall apply, mutatis mutandis.

The licensee may change the rate of subscription fees or service fees and conditions of service provision of the licensee subject to the criteria prescribed in the Notification by the Commission under paragraph three, but this shall not affect the rights of the subscribers within the period under the existing agreement.

In prescribing the criteria in the Notification under paragraph two and paragraph three, the Commission shall take into account the cost of service provision and fairness brought to competition among the different types of licensees as well as fairness brought to both the licensees and the consumers."
Then there is a media-related association called Digital Advertising Association of Thailand (DAAT) which operates similar to AAT giving high value to the ethical values that members should comply with. The majority of members are representatives from production houses. A Production house is a company that creates a visual advertisement to be sold to entrepreneurs.

3. Movie and Video

Movie and Video Act B.E. 2551 specifies for the Ministry of Tourist and Sport and the Ministry of Culture to control the movie and video related business. There are three main committees:

1) The Nation of Movie and Video Committee is responsible to submit policy, plan, and strategy related to the movie business

2) The Movie and Video Consideration Committee deliberate whether a foreign movie company can create a movie in Thailand. They specify the type of movies disseminated to public, allow media advertisements to be publicize in Thailand and gives approval for screening movies or videos outside the country.

3) Registrar Office has authority to inspect the venue where a movie will be created, as well as, look at the content of the movie, video and advertisements. In case of suspicion of illegal content, the registrar can seize the product for inspection. If proven not suitable or breaching the conditions that would permit to create a movie in the country, they can terminate the project, prohibit dissemination, permit for rental, exchange or sale of that movies or video.

4. Advertisement

Advertisement laws was motoring by many public organizations divide by the laws which include Criminal Code of Thailand, Criminal Procedure Code, Consumer Protection Act as follow:

1) Section 271 of the Criminal Code of Thailand B.E.2499 in relation to the Criminal Procedure Code B.E 2477 gives victims the right to report to the police or submit a petition of complaint to the court if damages as stipulated in Section 271 occur to the victim. The Consumer Protection Act B.E. 2522 controls advertisements of general products. The main objective of this Act is for customers to receive accurate
information that helps in the decision making process of buying a product or service. The Customer Protection Committee has the authority to consider petition of customers, and the duty to suggest the entrepreneurs and prosecute about customer's piracy. The committee has the duty to check the advertising model before it will be broadcasted to the public. This law shall apply for buyers, clients, and people who have been persuaded into buying for product or services.

3.2 Law Related to Internet in Thailand

By 1997 every country became more aware about the development of digital information and their improving technology. Japan, the United States of America, and the United Kingdom enacted the regulation to frame their electronic commerce system. Thailand has been influenced by the development of technology as well. Thailand enacted technology-related regulations including the Electronic Transaction Law and Electronic Contracts, Taxation Law, Trademark Law and Domain Name Law, Copyright Law and Works on the Internet Law, Patent Law and Law related to Computer Program, Data Protection Law, Anti- Spam Mail Law, Internet Providers’ Liability Law, and the Computer Crime Law. Nevertheless, there is only one law that can be applied for advertising on the internet which is the Computer-related Crime Law. Because online advertisements are computer data that enter the internet system, for further understanding the researcher will discuss the Computer-related Crime Act B.E.2550 in more details below.

3.2.1 Computer-related Crime Law

The Computer-related Crime Act B.E. 2550 is the only present law which has content relevant to online advertising. Nowadays, entrepreneurs increasingly choose the new media platform to advertise their products and services online. Section 3 of the Computer-related Crime Act enact the meaning of computer data as “information, messages, instruction, group of instruction, or anything else in computer system for the purpose that computer system could process and shall include
electronic data under the law on electronic commerce." Therefore the Computer Crime Act could be considered somewhat suitable when deliberating scope of meaning of computer data.

However, this regulation provides punishment for offender who committed an act that is not legal. The proceeding begins with the person who has been harmed to report to the police officer, further proceedings could end up in court. Significant here is that the person who has been harmed must proof the elements of the crime to the court and that the received information or data has actually caused harm to another person or the public; it can become overwhelming for the victim when not understanding the procedures due to complexity. While on the other hand, the consumer protection law, has a simpler procedure where the victim of a wrongdoing submit a complaint to Office of the Consumer Protection Board directly. The board will proceed on behalf of the victim and sue the entrepreneurs. The entrepreneurs will have to defend themselves with supporting evidence.

On the other hand, advertisements must be screened or checked before publicizing it public. The regulation must protect customers by allowing them to receive real information that are not misleading unlike the Computer Crime Act which does not have rule on limitation or restriction on what content is deemed inaccurate or misleading.

Section 10 of the computer-related crime law states that any person who illegally commits any act that causes the working of a third party’s computer system to be suspended, delayed, hindered or disrupted to the extent that the computer system fails to operate normally shall be if the online advertising leads for another computer to work abnormally, the person who has received damages can sue the wrongdoers. However, generally it is difficult for online advertising to interfere with the computer system, if such pop-up do not lead to infected websites, but consumers feel irritated by the constant popping up of these advertisements.

Section 11 states that any person sending computer data or electronic mail to another person and covering up the source of such aforementioned data in a

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45 Computer Crime Act B.E. 2550, Section 3.
46 Kanathip Thongrawewong, op. cit., p. 288.
manner that disturbs the other person’s normal operation of their computer system shall be subject to punishment. This provision covers the control of spam-email or computer data that do not require registration of identification, but it not control form of banners or pop-up advertisements. This provision can be applied to a certain aspect of online advertisements, referring to spam-mails and computer data that can be annoying to internet users.

Third, Section 14 (1) states that if any person commits any offence that involves import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to that third party or the public shall be subject to punishment. This section is too broad because there are too many forms of different advertisements. Videos that contain forge or false information do not fall under this provision.

Moreover, this provision focus on the legal proceeding of suing and punishing the advertisements rather than screening the content of advertisements that will be published for the public online. It does not prevent or reduce the distribution of misleading information in advertisements.

Lastly, computer-related crime law is enforced on advertisers like production houses who upload computer data into internet systems. The law does not apply to product or service owners. Thailand has a large number of advertisement producers that produce an advertisement for business owners. Generally, it comes in the form of an uploaded computer data that enters the internet system. The fact is this law cannot be used for dealing with product or service owners that give out false information about a product to the advertisers; it does not control the flow of information in advertisements but rather focus on the misuse of the internet system as a whole.

3.2.2 Organizations Controlling the Internet in Thailand

In Thailand, the Ministry of Information and Communication Technology or ICT is the sole organization controlling the internet and technology. The ICT has the following missions:

1. Suggest and manages the policy on developing information and communication technology of the country to lead to concrete action.
2. Promote and encourage cooperation, domestically and abroad, in order to have efficient and comprehensive development and usage of information and communication technology in all sectors.

3. Promote, research into, and develop information and communication technology for increasing potential and competitiveness of information and communication technology industry of the country.

4. Promote and support the development of personnel performing work concerned with information and communication technology and personnel of all sectors and divisions to be able to use information and communication technology efficiently.

5. Follow up the performance under policy on developing information and communication technology.”

The law that is most applicable toward online advertising is the Computer-related Crime Act B.E. 2550. It follows the Criminal Procedure Code which regulates for a person who has been caused harm to being able to submit a petition of complaint to the police officer for further legal proceedings. Moreover, there is Technology Crime Suppression Division that deals with criminal offences related to the internet. This organization has the mission to receive statements from victims and provide suggestions for further proceedings to the victim, as well as, screen the content for illegal materials. Nevertheless, it does not directly control the flow of advertisements.

Therefore, from all the laws related advertising and the internet of Thailand, we can summarize that advertising is a form of mass communication which gives internet users the right to publicize information freely on the internet; people have the right to receive complete information. We came to the conclusion that laws including the Print Act, Broadcast and Television Business Act, and Movies and Video Act cannot be enforced for online advertising because no relevant application is seeable. The Consumer Protection Act B.E. 2550, particularly referring to section 3, does not has a definition on media advertising. On the part of internet regulations, the

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Criminal Crime Code, Section 11 and Section 14 mention control the flow of spam-email and forge/false information going entering the internet system by computer data. Although it does not cover that true information is required to be presented to the consumers, it can attract the audience in short time. Therefore, it can be said that Thailand does not have any regulation that can be applicable to controlling or overseeing the content of online advertising directly and completely.

3.3 Regulations on Online Advertising used in the United Kingdom

When looking at models from other countries, there is one country that was able to implement regulations related to online advertising effectively and efficiently. The most successful model was found to be used by the United Kingdom, for this reason, the researcher would like to analyze the UK regulations related to online advertising in more details.

The UK comprises of four countries: England, Wales, Scotland, and Northern Ireland. A treat between England and Scotland resulted in a unified Kingdom of Great Britain which merged in 1801 with the Kingdom of Ireland to form the United Kingdom of Great Britain and Ireland. The name was adopted following independence of Free State, and the partition of Ireland in 1922. The UK used the same legal system. Regarding the regulations related advertising, the UK possesses the following:


The UK has two types of regulations related to advertising. First, there is the UK Statute which includes the Consumer Protection from Unfair Trading Regulations (200)8 and the Business Protection from Mislead Marketing Regulations (2008). Both regulations are of statutory status.

3.3.1 The Consumer Protection from Unfair Trading Regulation 2008 or CPRs

This regulation came into force on 26th May, 2008 which main purpose aims to protect consumers from unfair trading between business owners and consumers. They regulate general prohibition related to unfair commercial practice, specific prohibition conditions and misleading and aggressive practices which include over 31 blacklists that indicate advertising for unfair practice. The regulation applies to business owners to consumers from the beginning of entering a contract, one the contract has been put in force and following the termination of the contract. The general prohibition states that fairness should be given to the consumer. Unfair trading means "it is not professionally diligent; and it materially distorts, or is likely to materially distort, the economic behavior of the average consumer." Misleading action means "giving false information to consumers, or deceiving consumers." The regulation prohibits trading where consumers are given misleading information. Misleading omission means "Giving insufficient information about the product – things that the trader omits to tell consumers about a product.” In other words, where a marketer omits or hides material information or provides unclear, unintelligible, ambiguous or untimely information that can be considered of intentional misleading omissions. Aggressive practices means "It significantly impairs consumers' freedom of choice in relation to the product through the use of harassment, coercion or undue influence.” Lastly, the blacklists of 31 specific banned practices which cover all circumstances as follow;


51 Ibid., p.2.

52 Ibid., p.3.

53 Ibid.
1. Faking credentials — claiming to be a signatory to a code of conduct when the trader is not.

2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization.

3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

4. Claiming that a trader or a product has been approved endorsed or authorized by a public or private body when the trader or product have not.

5. Special offer, not in stock — making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply those products at that price (bait advertising).

6. Making an invitation to purchase products at a specified price and then
   (a) refusing to show the advertised item to consumers,
   (b) refusing to take orders for it or deliver it within a reasonable time, or
   (c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch).

7. Falsely stating that a product will only be available for a very limited time in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

8. Undertaking to provide after-sales services to consumers with whom a trader has communicated prior to a transaction in a language which is not an official language of the European Economic State where the trader is located, and then making such a service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

9. Stating or creating the impression that a product can be legally sold when it cannot.

10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content (advertorial).

12. Scare tactics – making an inaccurate claim concerning the nature and extent of the risk to personal security of the consumer or his family if the consumer does not purchase the product.

13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

14. Establishing, operating or promoting a pyramid selling scheme.

15. Claiming that the trader is about to cease trading or move premises when he is not.

16. Claiming that products are able to facilitate winning in games of chance.

17. Falsely claiming that a product is able to cure illness, dysfunction or malformations.

18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favorable than normal market conditions.

19. Offering a competition or prize promotion without awarding the prizes described or reasonable equivalent.

20. Describing a product as ‘free’ if the consumer has to pay anything other than the unavoidable cost of responding to the promotion and paying for delivery of the item.

21. Including in marketing material an invoice seeking payment which gives the consumer the impression that he has already ordered the product when he has not.

22. Hidden trader – falsely claiming or creating the impression that the trader is not acting for the purposes of his trade or falsely representing oneself as a consumer.

23. Creating the false impression that after-sales service in relation to a product is available in a European Economic Area State other than the one in which the product was sold.
24. Creating the impression that the consumer cannot leave the premises until a contract is formed.

25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave.

26. Making persistent and unwanted solicitations by telephone, fax, e-mail.

27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid.

28. Advertising to children — including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader but not solicited by the consumer.

30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won or will win a prize when there is no prize or the consumer must pay money or incur a cost in order to claim the prize.

The Consumer Protection from Unfair Trading Regulation 2008 states that the Office of Fair Trading (TSS) shall be the enforcement body. TSS has power to enter premises and inspect goods, require a trader to produce documents, seize and detain goods. The penalty for breach is forfeit can lead to a fine up to £5,000 and imprisonment not exceeding 2 years, or both.

3.3.2 The Business Protection from Misleading Marketing Regulation 2008.

This regulation came into force at the same time as the Consumer Protection from Unfair Trading Regulation 2008. It mainly applies to business-to-business relationship and indicates prohibition rules on mislead advertising which will

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“GCSE Home Economics, op. cit., pp.3-5.
be further explained below: n. 1. Misleading advertising and 2. Comparative advertising

First of all, the term misleading advertising was included in the regulation to apply to online business advertising that come in form of broadcast, billboard, print matter, oral representations, catalogues details and website or online advertising. It prohibits businesses to publicize advertising that contain misleading content. "Misleading" has been regulated as "a misleading advertising occur if it deceives, or is likely to deceive the traders it addresses or reaches, and the deception is likely to affect the economic behavior of those traders or as a result of the above effect on traders it injures or is likely to injure a competitor in some way.” Moreover, the regulation prohibits publicizing of deceptive nature to consumers. "Deceptive advertising" is where "An contains a false statement of fact – this may be possible to prove or disprove by evidence, conceals or leaves out important facts, promises to do something but there is no intention of carrying it out, and creates a false impression, even if everything stated in it may be literally true.”

Secondly, comparative advertising refers to the business advertising industry directly in the sense that one may advertise to destroy business competitors. It is considerable in the sense that when products are compared to consumers, it could change consumer's behavior to buy a products or services. It could also damage by discrediting other business' brand. The Business Protection from Misleading Marketing Regulation 2008 enacted a rule listing the prohibitions regarding comparative advertising as the comparative advertisement must not contain any of the features listed below. If it does it is not likely to be permitted.

1. The advert gives false information to, or deceives consumers, and this causes, or might cause, the average consumer to take a different decision about any goods, services, rights and/or obligations than they otherwise might have taken.


[56] Ibid.
2. The advert fails to give consumers enough information about a product and this cause, or might cause the average consumer to take a different decision about any goods, services, rights and/or obligations than they otherwise might have taken.

3. The advert is misleading under the BPRs.

4. The advert compares products that do not meet the same needs or are not intended for the same purpose.

5. The advert fails to objectively compare one or more material, relevant, verifiable and representative* features of those products, which may include the price.

6. The advert creates confusion (among traders) between the advertiser and a competitor or between the trademarks, trade names, other distinguishing marks or products of the advertiser and those of a competitor.

7. The advert discredits or denigrates the trademarks, trade names, other distinguishing marks, products, activities or circumstances of a competitor.

8. The product advertised, which has a particular designation of origin, is compared to a product with a different designation of origin.

9. The advert takes unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor, or of the designation of origin of competing products. 10. The advert presents goods as imitations or replicas of goods with a protected trade mark or trade name.

3.3.3 The United Kingdom of Advertising Code

The United Kingdom self-regulation system includes Broadcasting Advertising Code (BCAP) and Non-Broadcasting Advertising (CAP), Sale Promotion and Direct Marketing Code. These regulations are the main rules overseeing advertising in the UK.

BCAP regulates about broadcast communication such as television and radio advertising in UK. The broadcasting advertising code is the co-regulation system between self-regulation and the statutory state. The purpose of the regulation needs to

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57 Office of fair trading, Ibid., pp. 8-9.
regulate the advertising to editorial independence of editors and producers. Moreover, the marketing communication must separate the content between advertising and the television or radio programs clearly. They should not advertising product in the scope of surreptitious advertising and not support the unsuitable television or radio programs. The UK advertising code emphasizes the responsibility of marketing communication for audience and society.

On the other hand, the British Code of Advertising, Sales Promotion and Direct Marketing regulation cover non-broadcast advertising such as newspaper, print matter, and electronic media: online advertising, and etc. The codes are enforced by the Advertising Standards Authority or "ASA". This research will study the UK online advertising regulation, particularly, on the principles, the rules, and the work system.

The British Code of Advertising, Sales Promotion and Direct Marketing is a self-regulation that oversee the advertising industry. The Committee of Advertising Practice (CAP) is an organization that is responsible in enforcing, revising, creating the Code. The members include the Advertising Association, Cinema Advertising Association, Clear cast, Direct Marketing Association, Direct Selling Association, Incorporated Society of British Advertisers, Institute of Practitioners in Advertising, Institute of Sales Promotion Internet Advertising Bureau, Mail Order Traders Association, Newspaper Publishers Association, Newspaper Society, Outdoor Advertising Association, Periodical Publishers Association, Proprietary Association of Great Britain, Radio Advertising Clearance Centre, Royal Mail, Scottish Daily Newspaper, Society Scottish Newspaper, and Publishers Association. These organizations created an agreement with media publishers and consent to comply with the code. The Advertising Standards Authority (ASA) supports and manages the code.

The code is not a law but it fills the gaps where the law does not cover certain areas yet. It provided alternatives solution such as negotiating or indemnifying between the parties rather than going into civil litigation or criminal prosecution. This code is an alternative choice to the statutory regulations which is also accepted by Department for Business, Innovation, Skills and Trading Standards.

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1. The Scope of Non-Broadcasting Advertising, Sale promotion, and Direct Marketing

The British Advertising, Sales Promotion and Direct Marketing Code provide a clear structure on how the regulation shall be applicable, as following:

The important point of this regulation is the code enacted clearly about the scope of applying regulation. It explains delicate that the code applies for as follow:

"a. advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions, fax transmissions, catalogues, follow-up literature and other electronic and printed material
b. posters and other promotional media in public places, including moving images
c. cinema and video commercials
d. advertisements in non-broadcast electronic media, including online advertisements in paid-for space (e.g. banner and pop-up advertisements)
e. View data services
f. marketing databases containing consumers' personal information
g. sales promotions
h. advertisement promotions"

It is visible that the regulation almost covers all forms of non-broadcast advertising. What is interesting here is that the term "electronic media" has been used here; however, no exact definition is indicated. Online advertising can change perspectives of people toward a certain thing. For that, the law shall cover future online advertising and should provide regulations that should cover unforeseeable circumstances that may happen in the future as well. Topic D divides electronic media into 4 types:

1) Online advertising in paid-for-spaces including banner or pop-up advertising and online video advertising, and etc.

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50 The United Kingdom of Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code 2008, p.5.

60Ibid.
2) Online advertising in paid-for search listings
3) Preferential listing in price comparison sites
4) Viral advertising

Moreover, the British Advertising, Sales Promotion and Direct Marketing Code states further the following:

"a. broadcast commercials. (The BCAP Advertising Standards Codes set out the rules that govern broadcast advertisements on any television channel and radio station licensed by Ofcom.

b. the contents of premium rate services, which are the responsibility of PhonepayPlus; marketing communications that promote these services are subject to PhonepayPlus regulation and to the Code

c. marketing communications in foreign media. Direct marketing that originates outside the UK but is targeted at UK consumers will be subject to the jurisdiction of the relevant authority in the country where it originates so long as that authority operates a suitable cross-border complaint system. If it does not, the ASA will take what action it can. All members of the European Union, and many non-European countries, have self-regulatory organisations that are members of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross borders complaints system for its members (which include the ASA).

d. Health-related claims in marketing communications addressed only to the medical, dental, veterinary and allied professions

e. classified private advertisements, including those appearing online

f. statutory, public, police and other official notices/information, as opposed to marketing communications, produced by public authorities and the like

g. works of art exhibited in public or private

h. private correspondence, including correspondence between companies and their customers about existing relationships or past purchases

i. live oral communications, including telephone calls

j. press releases and other public relations material, so long as they do not fall under 1.1 above

k editorial content, for example of the media and of books

l. regular competitions such as crosswords

m. flyposting (most of which is illegal)
n. packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product, a sales promotion or are visible in a marketing communication or point of sale displays, except those covered by the sales promotion rules and the rolling paper and filter rules

p. election advertisements as defined in clause 12.1

q. website content, except sales promotions and advertisements in paid-for space

r. sponsorship; marketing communications that refer to sponsorship are covered by the Code

s. customer charters and codes of practice.”

2. The General Principle Section of Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code

1) Compliance: in this subtopic, the code defines the rules about marketing communication which should be legal, decent, honest and truthful. In addition, it must reflect the spirit, not merely the letter, of the code and responsibility to consumers and to society. Moreover, the marketers must accept all general rules which statutory states law and self-regulation code.

2) Recognition of marketing communications: this subtopic defines that the marketers must identify themselves, e.g. spam e-mail generally are sent with no name of sender, provide false or untrue information or are not clearly headed.

3) Misleading advertising: Once a complaint related to marketing communication with misleading information is issued, the ASA shall examine the claim according to the Consumer Protection from Unfair Trading Regulations 2008. Marketing communication must not consist of exaggerated information, information that can mislead due to omission of certain materialistic information, concealment of information, and presented not clearly to the consumers. Regarding the quotation of prices, the marketers must provide details about the products; identify the marketer's

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62 Ibid., p. 15.
address, specify a clear price including taxes, delivery cost, and other cost. Moreover, it is important that the marketers don't conceal their identity. Marketing communications are prohibited to claim that a product can facilitate winning in a game, and the advertisers' job or livelihood is in jeopardy when consumers don't buy products.

4) Harm and offence: Marketing communication must avoid causing any offences related to race, religion, gender, sexual orientation, disability or age. Marketers must not cause intentional fear or distress in the advertisements with no suitable reason. Furthermore, they must be sensitive when referring to a person who has passed away and can cause distress to viewers. Also, marketers shall not encourage violence, anti-social behavior, drink and drive.

5) Children: Marketers shall keep in mind that the younger generation including children may watch the advertisement. An advertisement that target audiences are children should contain content of physical, mental or moral abuse toward children. For example, the advertisement should not encourage children to talk to strangers, show hazardous situation scenarios or dangerous behavior, and shall not make children feel inferior or not popular if they do not purchase the advertised product or service, and etc.

6) Privacy: the marketers shall not portray or refer to anyone without receiving permission. For example, while Mr. A drinks a beverage product of Company B, Company B took a photo and without knowledge or consent of Mr. A post it online for advertisement. Company B would be infringement the privacy rights of Mr. A.

7) Political advertisements: Marketers shall not publicize advertisements related to political ideologies that could encourage or influence the audience in voting for a particular party.

8) Sales promotions: Advertisers can make promotions for a sale of a product, however, such promotion must be fair to other competitors, provide all information that consumers will need to know, and not cause unnecessary disappointment for consumers once purchased.

However, promoters should check with the legal implication of the Gaming Act 2005 Great Britain and the Betting, Gaming, Lotteries and Amusements
(Northern Ireland) Order 1985 before publicizing an advertisement on sale promotion, particularly, on the competition prize draws, instant-win and etc. The promoters shall act in reasonable manners and not promote advertisement related to sale of alcohol for people under the age of 18 years.

9) Distance selling: distance selling is a type of marketing communication that promotes selling products or services with no face-to-face interaction. The marketers shall post a product and provide clear information of its identity as well as the address, price including VAT, shipping costs, and etc. There shall also be a return policy if the consumer is not satisfied with the product and want to return it.

10) Database practice: Marketers must comply with all relevant data protection legislation. Guidance on the legislation is available by the Information Commissioner’s Office. Personal information must be kept secured and not use without permission of the information owner. Marketers must not do unwanted marketing communication by telephone, e-mail, or others. The marketers must therefore comply strictly with all data protection legislations.

3. The Specific Category Sections of Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code

1) Medicines, medical devices, health-related products and beauty products: There are many rules for marketing communications for medicines, medical devices, health-related products and beauty products. First of all, any claims must have supporting evidence. Secondly, marketers shall not provide advices on specific diagnosis of treatment. Third, marketer should allow consumers to seek for independent medical advice before choosing any type of treatment. Forth, marketer should not confuse consumers by using words that can be misunderstanding. Marketers should not assume any diagnosis that is incorrect, they also should not advertise that

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63 The United Kingdom of Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code 2008, p. 38.
64 Ibid., p. 46.
65 Ibid., p. 50.
their product can do wonders and cure illness, dysfunction or malformations completely. Cosmetic products can only refer to relief that can be substantiated. Moreover, Medicines must have obtained a license from the **MHRA**. Any claim must have supporting evidence.

2) Weight control and slimming product: Weight control and slimming product are very popular nowadays. Marketing communication has become a growing trend in advertising, for this reason, advertisers shall comply with the rules and regulations to assure that a product does not harm consumers. Products should be tested, diet plan must be balance with consumer’s category, vitamin and mineral cannot be an aspect of weight-reduction, and marketing communication for diet product must be clear by explaining how they work and not exaggerating about the qualification. Moreover, marketers shall not advertise that obesity in adult as specified by doctors is better than weight control products. <Marketers must also show that their diet plans are nutritionally well balance.

3) Financial products: Marketing communication of financial product can easily be misunderstood and be unclear to greedy consumer. Therefore the Financial Services and Markets Act 2000 and in the Financial Services and Markets Act 2000 has been put into force. These regulations provide clear description that marketers should not take advantage by leading consumers to misunderstanding the qualification of the project, all messages communicated must be clear and easy to understand. The rate of interest or forecasts must be apparent.

4) Food, food supplements and associated health or nutrition claims: Nowadays, people are increasingly focusing on a healthy life-style. Marketers must comply with the Food Safety Act 1990, and the Food Labeling Regulations 1996. Marketing communication of this kind must be extremely cautious including details about nutrition. Marketing communication in this category must not promote for

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66 The United Kingdom of Non- Broadcasting Advertising, Sale Promotion, and Direct Marketing Code 2008, p.54.

67 Ibid., p.61.

68 Ibid., p.65.

69 Ibid., p.68.
excessive consumption of food, they should not state that a product is better than any other product, it shall not lead to misunderstanding of health benefit and the nutrition it comprises of, and shall not lead to promote an unhealthy life-style or poor nutrition to children.

5) Gambling: While some countries legalized gambling, it is still illegal in many countries. Marketing communication must therefore be very conscious about the responsibility that they have toward society. They should not lead people to understanding that gambling can make life better, can be the solution to their financial struggles, and encourage criminal or anti-social behavior.

6) Lotteries: Lottery is very popular in many countries. There are many rules that state that marketing communication for lottery is also a responsibility that the marketing company has toward society. The target group should not be people of ages under 16 years.

7) Alcohol: Alcoholic beverages are social problems around the world. Marketing communication about alcohol shall not target audience that is younger than 18 years old. It shall not encourage irresponsible behavior or lead to the understanding that it is a key element of successful people. Advertisements must show that there are negative effects and the actual facts of what the product contains.

8) Motoring: Most people get hurt and die because of accident occurring on roads. Marketing communication of motoring must not lead to anti-social behavior or show the speed used while driving. It must promote safety on road while not emphasizing on the speed and acceleration.

9) Employment, homework schemes and business opportunities: Marketers must display clearly whether such information is for employment or business opportunities. Media owners must ask the details, terms and conditions of such advertisement before publication. For an employment ad, the salary and commission must be stated clearly. Moreover the publication must be from a real company that actual is seeking for an employee. The companies looking to hire must indicate clear information about the position, work place, qualification work and salary, and assure that the marketer is an employment agencies or employment

\footnote{The United Kingdom of Non- Broadcasting Advertising, Sale Promotion, and Direct Marketing Code 2008, p. 82.}
Doing homework or assignments for others have become very popular on online media, this is why rules were needed to control this. Marketing communication related to this would need to state the information about the condition and restrictions that could influence the decision of the consumer.

10) Tobacco, rolling papers and filters: The number of smokers is still the same when comparing to the past, the UK, nevertheless, prohibits the advertising of tobacco. Marketing communication related to rolling papers and filters shall not encourage people to begin smoking. Moreover it is prohibited because it can physically and emotionally damage the younger generation including teenagers. Smoking shall not be advertised in manners that it is seen natural, safe, popular, glamorous and aspirational or lead to social recognition, sex, business opportunities and others. Rolling papers and filters advertising shall not show smoking people in the ad.

It is interesting to note that the UK has an advertisement system which is of statutory status and self-regulatory that works effectively and efficiently among advertisement organization members. The UK Non-Broadcasting Advertising, Sales Promotion and Direct Marketing Code can fill the gap of the statutory flaws and enables for easier understanding for marketers and consumers. The Code clearly set rules to products and services that are more popular used by Non-Broadcasting media especially online advertising media. However, for Thailand, some of the categories like gambling could not be adopted into the regulations.

3.3.4 Responsible Organizations under the UK Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code

The UK Non-Broadcasting Advertising, Sale Promotion and Direct Marketing Code is self-regulatory and comprises of three main organizations.

First, the Advertising Standard Authority or ASA is a limited company which is independent from the government and marketing business. The Chairman of the ASA must be selected by the ASBOF (Advertising Standard Broad of Finance).

71 The United Kingdom of Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code 2008, p 91.

72 Ibid., p 97.
The ASA has the duty to receive complaints and investigate accordingly through ASA’s council. It shall adjudicate to withdraw or amend the marketers, and the adjudication shall be published weekly on their website. The ASA always considers adjudicating neutrally by conducting substantial research and monitoring program.

Second, the Advertising Standard Board of Finance or ASBOF sets the framework of the marketing industry policies. The ASBOF must response to the Committee of Advertising Practice and fund the self-regulation system. The funds come from a levy on advertising and direct marketing outlays which are collected by ASBOF. “ASBOF’s member are advertisers, promoter and direct marketers, their agencies, the media and the trade and professional organizations of the advertising, sales promotion and direct marketing businesses.”

Third, the Committee of Advertising Practice or CAP is responsible to assure that advertising or marketing communications in the UK are in compliance with the code. This committee shall create, review, and amend the codes. Moreover, it oversees sanction of member and website officials in case of breach.

3.3.5 The United Kingdom’s Computer Misuse Act 1990

The UK has a regulation concerning computer crime known as the Computer Misuse Act 1990. The Computer Misuse Act is a part of the Police and Justice Act 2006 which consists of Chapter 48 and has been put into force in 2008. Computer Misuse Sections begin from Section 35 to 38 in the Police and Justice Act 2006. The main issues of this regulation are as follows:

First of all, the regulation does not state the definition of computer but describing computer data as "b) "computer data" means any representation of facts,

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74 Ibid., p 99.
information or concepts in a faun suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function.”

Second, the regulations punish wrongdoers who act as following:
1. Unauthorized access to computer material.
2. Unauthorized access with intent to commit or facilitate a crime.
3. Unauthorized modification of computer material.
4. Making, supplying or obtaining anything which can be used in computer misuse offences.

It is notable that the UK Computer Misuse Act is not related to online advertisement. The Objective of this regulation is to punish wrongdoers like hackers and etc. which is different from the computer-related crime law of Thailand where under some circumstance the lawyer would apply the regulations related to misleading online advertising information. Therefore, it can be concluded that on the part of online advertising and computer crime the UK model would be efficient and meet the objective of the law.

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Chapter 4
Analyzing the Enforcement Problems of the Online Advertisement Laws

In Chapter 4, the researcher will analyze the online advertisement regulations used in Thailand and the United Kingdom. The research will focus on analyzing 4 topics: the scope of regulation, the general rule and specific rule, organizations that will enforce the law, and penalty or remedy.

4.1 A Comparative Analysis between the Online Advertising Law in Thailand and the Regulations in the United Kingdom

Thailand has the laws which motoring communication media and interne in recently. The United Kingdom has the regulations to motoring online advertisement especially. This part will explain the different between Thailand laws and the United Kingdom as follow:

4.1.1 Comparing the Advertising and Internet Regulations Used in Thailand with the Regulations Used in the United Kingdom

Presently, Thailand has the following related laws, namely, Print Recordation Act, Broadcast and Television Business Act, and Movie and Video Act which however do not cover monitoring content of online advertisement. The reason for that is that they are laws with specification, meaning, they only particular can be applied to strictly print matter, radio and television and movie. However, there are two laws that can be complied to when discussing online advertisement; The Consumer Protection Act B.E. 2522 and the Computer-related Crime Act B.E. 2550. This research will compare these laws with the scope of the Non-Broadcasting Advertising Act, Sale Promotion and Direct Marketing Act, and Computer Misuse Act of the UK as following.

First of all, the Consumer Protection Law of Thailand applies to general products. Section 3 of the Consumer Protection Act defines the term advertisement
media but does not cover any scope of online media, meaning that the definition of advertising media " in Section 22-29 of the same law does not apply to online advertising areas. In other words, meaning, that there is no rule or limitation in publishing something on online media. The content of the online advertisement may be misleading to viewers or be exaggerated with no control, monitoring, or penalty for misleading information.

On the other hand, UK has a Consumer Protection from Unfair Trading Regulation 2008 (CPRs) and a Business Protection from Misleading Marketing Regulation 2008. The CPRs provides a clear scope of definition which applies for any act in the area from business to consumer. " The Business Protection from Misleading Marketing Regulation 2008 shall apply to both the advertiser and the audience in order to prevent any kind of misleading of information. Section 2 of this act states that "advertising means any form of representation which is made in connection with a trade, business, craft or profession in order to promote the supply or transfer of a product and "advertiser" shall be construed accordingly; "code owner" means a trader or a body responsible for—

(a) The formulation and revision of a code of conduct; or
(b) Monitoring compliance with the code by those who have undertaken to be bound by it;"

77 Consumer Protection Act B.E. 2522, Section 3 "advertising media" means a thing as advertising media, such as newspaper, printed matter, radio, television, post and telegram, telephone or sign board."

"The scope: The CPRs apply to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a product to or from consumers (whether before, during or after a commercial transaction, if any). They do not apply when only consumers are involved in a transaction. Most commercial practices covered by the CPRs will involve a direct relationship between businesses (that is, 'traders') and consumers. However there may be instances where the commercial practice could have a sufficiently close connection with consumers as to fall within the scope of the CPRs, even though the trader himself does not deal directly with consumers 4.

Notable is that this provision applies to all types of advertising media. If the owner of a good or service make and advertisement, they have the duty to comply with these regulations before publishing it. This shall also refer to online media advertisement.

Reviewing the United Kingdom regulations, a very important regulation stood out, the "British Code of Non-Broadcasting Advertising, Sale Promotion and Direct Marketing regulation." It is a binding agreement of cooperation between advertising organizations in the UK. The members agreed and signed an agreement to set up an independent organization and oversee all areas of advertising including non-broadcasting advertising and broadcasting advertising. The regulation provides clear scope, general rule, specific rule, and organization authority. It regulates the following:

"a. advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions, fax transmissions, catalogues, follow-up literature and other electronic and printed material
b. posters and other promotional media in public places, including moving images
c. cinema and video commercials
d. advertisements in non-broadcast electronic media, including online advertisements in paid-for space (e.g. banner and pop-up advertisements)
e. View data services
f. marketing databases containing consumers' personal information
g. sales promotions
h. advertisement promotions”

For all the above mentioned details, it can be determined that the regulations of the United Kingdom are more advanced and better than the current Thai related laws. The UK regulations prevent problems related to unfair marketing communication more efficiently because when comparing it with the Consumer Protection Law used in Thailand, the Thai laws is not adaptable to changing development, particularly on lacking regulations related to monitoring content of online advertisements.

80 The United Kingdom Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code 2008.
The table shows the statement of the scope of advertising regulations belonging to Thailand and the United Kingdom.

The Computer-related Crime Law of Thailand applies to monitoring internet content passing the computer. Section 14 of this act has a rule that could cover the area of online advertisement. Section 14 (1) and (2) states that any person commits any offence that involves import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to a third party or public shall be subject to punishment. Because once someone has uploaded a post, it will spread very fast and cannot be controlled anymore. In this regards, screening the content of online advertising before entering the online platform would prevent such content to reach the audience which can also be considered as a protection shield for the audience. The Computer-related Crime Law, however, also does not conform with online advertising directly, Section 14 only refers to forge or false data in a manner that is likely Computer-related Crime Act B.E.2550 section 14 state only forge or false data in manner likely to cause damage to a third party or public, but no mentioning about exaggerated advertisement or comparative advertising that do not contain forge or false information. Not being able to control online advertisement in this sense makes the current laws in Thailand not as efficient as it could be. In the UK, the Computer Misuse Act provides protection to computer users from attacks that can harm the computer (such as spreading of malicious or viruses) and information theft. It further regulates that persons are prohibited to access other computer system with no consent. Although in the part of computer data it does not specify advertisements but the rules related to this must be abided.

In conclusion, when comparing the laws on online advertisement between Thailand and the United Kingdom, it is clear that there are differences when looking at the both countries. We can see that the current laws in Thailand do not cover the field of online advertisement and were not enacted for the purpose of regular advertisements as well.

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Table 1: The table shows the online media regulations belonging to Thailand and the United Kingdom

<table>
<thead>
<tr>
<th>Subject</th>
<th>Regulations Related to Online Media</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Country</strong></td>
<td><strong>Thailand</strong></td>
</tr>
<tr>
<td>Name of Regulation</td>
<td>Section 14 “If any person commits any offence of the following acts shall be subject to imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both: 1. That involves import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to that third party or the public; 2. That involves import to a computer system of false computer data in a manner that is likely to damage the country's security or cause a public panic.”</td>
</tr>
</tbody>
</table>

4.1.2 Comparing the Prohibit Rules of Advertising Regulations of Thailand with the United Kingdom

In Chapter 3, we studied the laws in Thailand and the United Kingdom related online advertising. The United Kingdom has enacted clear statutory regulations for state in order to oversee online advertising. The Non-Broadcasting Advertising,
Sale Promotion, and Direct Marketing Regulation describe the general and specific rules of product advertisement. Thailand, on the other hand, has a Consumer Protection Law which when comparing with the regulations of the UK determined that the general rules are similar. Then there are the specific acts such as Drug Act B.E.2510, Food Act B.E. 2522, Medical Device B.E. 2551 and etc. which similar which can be considered similar to the specific rules of the United Kingdom Advertising Code. In the following, we will analyze the differences in the regulations between Thailand and the United Kingdom: The United Kingdom's Consumer Protection from Unfair Trading Act (2008) imposes general and specific rules for all marketing communication for fairness. The general rules regard the general prohibition that all marketing communication must follow the law. The marketing communication platform must not provide any misleading and aggressive information to the consumers in any way. The specific regulation refers to 31 practices that are strictly banned under any circumstance.

However, the Business Protection from Misleading Marketing Regulation (2008) does not divide the regulation into general and specific rules but rather focus on the two areas, misleading advertising and comparative advertising in order to enforce the regulations for all kind of advertising under any circumstances and for all media.


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82 See at Chapter 3, pp. 41-43.
It is interesting to note that the regulations of the United Kingdom have set rules on products that could affect children or social wellbeing. The same rules have been set for all general products while the rules for specific products varied making it suitable to each category.

The general rules for all type of advertising products in Thailand, on the other hand, is regulated in the Consumer Protection Law in the Sections 22 to 29. The main purpose for this is that it shall prevent consumers from being given unfair information and not affect society. This law states unfair as forging, exaggerating, misunderstanding elements of goods/service, or affecting morality and society, but it does not cover misleading advertising, give concerns toward children, environmental effects and other important items.

While the Consumer Protection Law indicate that general rules shall apply for normal goods or services, but the specific goods like drug, cosmetic, medical device, alcohol, tobacco, hazard substances and food have specific laws to oversee the scope. The problem with the specific laws is that it is quite difficult to understand what category a specific product has been classified to. In addition, all laws are quite complex by themselves. It can be said that the laws have both good and bad sides, on the one hand the laws have been laid out to suit the product classification, but on the other hand there is no standard measure they can base it on. For example, the definition of advertising are different in this law, there are some acts where no definition is provided leading to the specific laws on online advertising to have different rules for different products or services.

In conclusion, examining the laws of Thailand and the United Kingdom, it was clearly visible that the advertisement law of Thailand lacks important rules that could make the law more efficient such as by adding rules related to misleading information, or for the protection of children, environment or privacy in relation to online advertising. Moreover there is no standard for specific rules of products concerning the different classifications of products. It can be said that the UK regulations are more progressive and comprehensive compared to the ones in Thailand. The table shows the comparison of prohibited regulations between Thailand and the United Kingdom.
4.2 Analysis of the Legal Problems Concerning Online Advertisement Regulations in Thailand

In this part, the researcher will analysis the legal problem related online advertisement law which motoring in Thailand recently, and the alternative resolution to solve the online advertisement’ legal problem of Thailand.

4.2.1. The Legal Problems Related the Definition of Online Advertisement

Nowadays, there are many forms of online advertising in Thailand such as written advertisements, picture advertisements, voice advertisement, movie or video advertisements, and combinations of written and picture advertisements or picture, audio and written advertisements. Publishing advertisements online can come in many forms and many ways. However, some of the most recent laws have been applied to advertisements that have been published online. For example, illegal products and services such as advertising about gambling, products relating sex, unregistered guns, prostitution, and etc.

![Gambling advertisement on online media](super-biker.com)

Picture 10: Gambling advertisement on online media
This type of advertisements is clearly illegal in Thailand because it is prohibited to be sold in Thailand. The Thai Criminal Code and Computer-related Crime Act strictly prohibit the sale of illegal products. However, there are a large number of other advertisements that has been published online and are not considered illegal according to the Criminal Code. These advertisements are deemed to be unfair advertising toward internet and media users. An example of such content include pop-up advertisements that do not allow consumers to skip and the content may promote exaggerate material such as mobile promotion, air ticket promotion, products reviewing, exaggerate advertising about drugs, cosmetic or weight control products, employment seeking advertisements or working from home and others.

Picture 11: Illegal drug advertisement on online media

Picture 12: Pop-up online advertisement that cannot be skipped or avoided watching
An online advertising that belonged to Marnfah Company published a product related to financial investment online. The advertisements is sending an attractive offer out to the public, trying to persuade people to invest in their product and guarantee a return of 15% which is more than the actual bank interest. Because it was not legally authorized, the Security and Exchange Commission came out stating that such information is infringing with Section 33 of the Securities and Exchange Act 2535. However, the advertisements was published online but there is no relevant organization and no regulations as well that permit the monitoring of content on online advertising and check whether unfair information have been published online so that they can remove it before any damages occur toward the public.
Although, the advertisement was not of illegal product or service but the message that has been published can mislead internet users into believing and buying it which would not be fair to the internet users. The photo of large amount of money can also be a temptation for internet users to give it a try. Another example is the sale of tickets to participate in seminars related to money investment; the person who wants to participate will pay for the ticket and not really be given the promised return. The message of such advertising was not straight forward and opposes the principle of the right to know of our Thai Constitution law. The problem is that the current regulation still does not cover all forms of advertisements; there is only a regulation to control media communication and advertising. However, the media communication regulation cannot be applied effectively because it is actually a criminal offence under the Computer-related Crime Law. In addition, the Consumer Protection Law cannot be applied toward online advertisements because as the term of media advertising and the requirements do not cover monitoring all types of online related content.

Most recently, Thailand has adopted laws on media communication which also applies for advertising in media of print matter, television, radio and movie; however, it does not apply to online media and therefore cannot be applied to online advertisements. The media communication law includes the Print Recordation Act, the Broadcasting and Television Business Act, and the Movie and Video Act. These laws only apply to media communication in Thailand but not include written, visual, audio
and movie advertisements because there is no definition of online advertising provided as following:

The Print Recordation Act shall be enforced for the newspaper and print matters only, written advertisement is not included. Because advertisements that are put online and also contain written text will not fall under this regulations, this regulation cannot be applied here. Print Recordation Act can only be applied to newspaper and print matter such as magazines.

The Broadcasting and Television Business Act came into force to control broadcasting communication like radio and television. Section 23 of the Act entails the rule of advertising in order to monitor the number of broadcasted advertisements. This law stresses about the maximum duration of each advertisement, it only applies specifically to broadcast communication but not for other forms of communication including online media.

The Movie and Video Act is used for film production within Thailand and also include video materials about game and karaoke. There is no clear definition provided on whether video advertisement is also considered here. Moreover, there is no provision stating the rule of advertising or what is prohibited for advertising. This law, therefore, cannot be considered to also apply to video advertising that is published on online media and other media communication forms.

For this reason, we found that online advertising cannot fall under the law of communication related to written, visual, and audio and movie, or video advertising.

Moreover, The Thai Compute-related Crime Law is generally used to punish who steal personal information, spread viruses to damage computer systems or is in other way considered illegal. Some Thai lawyers are in the opinion that the Computer-related Crime Law could also apply to online advertising under circumstances. However, it should not be applied as there is no actual rule that refers to the publication of advertisements on online media platforms. Moreover, it applies in cases of forge and false computer data as stated in Section 14, illegally committing any act that causes the working of a third party's computer system to be suspended, delayed hindered or disrupted to the extent that the computer system fails to operate normally according to Section 10, and sending of computer data or electronic mail to another person and covering up the source of such data in a manner that disturbs the other person's normal operation of their computer system under Section 11. This shall not apply to advertising that is considered to be misleading, exaggerated, aware of the impact it may cause toward children, of political concerns and may harm or becomes an offence under
circumstances and others. This may be different when comparing the regulations with other countries. Computer misuse has been classified into four types of offences that it may fall under: 1. Unauthorized access to computer material, 2. Unauthorized access with intent to commit or facilitate commission of further offences, 3. Unauthorized modification of computer material. And 4. Making, supplying or obtaining anything which can be used in computer misuse offences. It can be noticed that the Computer-related Crime Law in Thailand may be applied for online advertisement oblique of the law objective.

In addition, the Thai Consumer Protection Act B.E.2522, Section 3, does not cover online media because the definition does not include the term online media, meaning that online media area cannot be considered to fall under Section 3 due to the definition. It can clearly been seen that it cannot be used for online advertisements or other important forms of media communication that could monitor the development of technology in society. This is a necessary to prevent to monitor misleading advertising or nearly illegal statements in online media. The Consumer Protection Law can therefore not be used for online advertising which illustrate a legal gap in the regulation.

Moreover, the laws related to advertising in Thailand lacks penalty clauses that shall be applied for online advertising. After comparing the laws of Thailand with the United Kingdom, we found that the laws of Thailand still lacks prohibition clauses that should be applied toward wrongdoers when there are misleading information, the compliance for social responsibilities, recognition and identifying content related to marketing communication or advertising, content not suitable for children, content that could lead to panic in society, political advertising, environment related and others. It reflects that the Thai advertising laws were obsolete for the new communication marketing and a format for other types of advertising.

It cannot be denied that there are way too many online advertisements which is not fair and violates the right of internet users. The Thai laws also lack specific indication including as financial product, motoring, tobacco, employment, and others. However, Thailand does have specific regulations related to drug, food, alcohol, cosmetic, medical device, and hazardous substance. These regulations contain rule that need to be obeyed when publishing rules related to specific product. However, these

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regulation adopted several measures of standard and they were different in different categories. In other word, there were different definitions for advertisement whereas some do not provide the definition of the term at all. The table shows the status of regulations covering online advertising in Thailand.

4.2.2 An Alternative Solution Solving the Legal Issues Relating to Online Advertisement

In Thailand, there are two main categories related to online advertisements. First of all, there is the law that is enforced on media communication such as television, radio, print matter and movies. Secondly, there is the law covering advertising. None of the laws, however, can be applied to online media communication. Therefore, the writer would like to make the following recommendations to resolve the legal problems, as following:

First of all, legislative amendments to the old regulation is needed which would mean that a number of laws must be amended in accordingly including the Consumer Protection law, and other specific products laws such as the Drug Act, Food Act, and etc. However, amending the laws in the past were not efficient in also covering online advertising as can be seen from the amendment of media advertising which can apply the law to enforce for the online advertising in Consumer Protection Act as well. Although Thailand already has a Consumer Protection Act but amending the laws does not solve all legal problems completely. The researcher is in the view that the definition of online media should be added to Section 3. However, the Consumer Protection law protects the relationship between business owners and consumers only. It does not cover advertisers, house production or general persons who create an online advertising. In addition, there is online advertising that does not serve for business products/services or serve for marketing purposes. For example, an announcement inviting people to enter a festival with no entry fee. Even though, it is a business advertising event that consists of consumers and entrepreneur mainly, there may be the need for particular rule for this occurrence as well. The main concern here would be that the process of amending the laws could take many years because there are so many laws that will need to be amended, however, the problem related to online advertisement will grow increasingly with time.
My second or an alternative solution would be to draft and legislative a new regulation to monitor the content of online advertisements. Regulation models from the UK can be taken into consideration such as the Non-broadcasting Advertising Code, Sale Promotion and Direct Marketing regulation which all cover online advertising in all aspects. The self-regulatory code commits advertisers, communication marketing agencies and other organizations in the United Kingdom to enter into an agreement to prevent unfair online advertisement by screening the text before publishing. The goal of this code was not to punish advertisers but to prevent unfair information to be advertised and compensate affected persons. Because it has not been used in any cases it can also be used as negotiation mechanisms.

However, the self-regulatory methodology may not be as suitable for Thailand as the system can face instability very easily. One of the reasons for this may be that it is difficult to centralized or get all relevant parties together. In addition, online advertisement is more often being published by a person on personal capacity rather than from a representative of the business sector. Therefore, it would be difficult for all parties to engage and agree to enter in such an agreement. We also cannot deny that the private sectors in Thailand are still caring about personal interest over social responsibility. It may therefore not be as suitable as in the UK; however, there is a need for regulations that can be applied for online advertising directly.

Therefore, I would suggest that Thailand will need to have a relevant legislation that can be applied to solve the legal issues. It may enact it in a way that rules for social responsibilities will also be required to be determined. Thailand could use the UK model and analyze and adapt from the UK regulations referring to the Non-Broadcasting Advertising Act and Sale Promotion and Direct Marketing Act to adopt an online advertising law. Moreover, new legislation can add necessary sections to control the flow of online advertising and use it for not only the business sector but all relevant parties for all forms of advertising under any circumstance. Lastly, the benefit of legislating a new regulation is that it would not conflict with the content of previous regulations as the new legislation should monitor online flow of media advertisements only which shall not affect any previous regulations.

Therefore, in my opinion, the best way to solve this legal problem would be to enacting a new legislation that monitors the flow of content of online advertisement. This could lead to a more suitable and efficiently online advertisement law for Thailand.
Chapter 5
Conclusion and Recommendations

In Chapter 5, the researcher will summarize the recommendations to resolve the legal issues related to controlling online advertising in Thailand.

5.1 Conclusion

From the research we encountered that the main legal problem for publicizing advertisement online in Thailand is that there is no regulations for controlling unfair information on online media platforms. The internet was first discovered by an organization under the name ARPANET which is based in the United States. They created the network system of the internet which lead to wide spread communication and connecting people worldwide. It created the first network to implement a system for the internet to for. The term “internet” means "International Network or Inter Connection Network". It transfers computer data between computers. When the internet was introduced to Thailand new forms of media advertisements has also developed with time.

History revealed that in Thailand media communication exists for a very long time, particularly in the field of media communication... The researcher has categorized the forms of advertisements into 4 groups include writing advertising, picture advertising, voice advertising and movie or video advertising. Examples for these forms of advertising are television, radio, print matter, newspaper, billboard, and internet. Online advertising began when electronic mails have been introduced and ARPANET promoted their product. Consequently, more forms of online advertising such as banner, pop-up, clip video, pay per click and others emerged on the online media platforms Thailand has also been influenced by this as can be seen on present online media platforms. The reason it has become so popular in Thailand is because the internet is fast, cheap, and can connect a wide range of audience from anywhere. It definitely has become a new and popular way of advertising for the business marketing sector. A large number of companies took advantages of this and so did people who wanted to sell their own product, goods or services.
With the popularity of internet in Thailand, more and more information on advertisements were seen unfair toward internet users. The information deemed to be misleading and exaggerating. Sometimes the lengths of a video clip deems long and there is no option to skip the ad until the video has finished or sometimes the content is not suitable or appropriate for the audience who are children. These issues shall remain legal problems unless a clear definition has been set out that covers online advertising.

There is no definition of online media imposed in any of the laws in Thailand. The Consumer Protection Act, Print Recodertion Act, Broadcast and Television Business Act, Movie and Video Act, and also Criminal-related Code can only apply to media communications which are print matter or newspaper, television and radio, and movie or video but not on online media. Laws that oversee general and specific products do not provide a definition of online media as well. Some elements related to online advertising could fall under the Computer-related Crime law but it only covers where person has false or forge computer data which can be a threat toward the public. It does not cover the publication of information that is deemed unfair to competition or internet users. The objectives of the Computer-related Crime law in comparison with the UK regulations were also difference. The United Kingdom uses the Computer Misuse Act to monitor and punish hackers or a person that has stolen personal information from the computer system. For Thailand, we would use the Computer-related Crime law but at the same time we also have to consider other relevant regulations that could overlap or conflict with one another.

Reviewing the United Kingdom regulations, the researcher found that there were several relevant regulations; the Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code. The Code states that there shall be a binding agreement of cooperation between advertising organizations in the UK. It is a self-regulatory approach to protect themselves from advertisers. This code has a clear definition of online advertising and describe comprehensively for what type of products it applies. Moreover, this code stipulates prohibitions that are related to social responsibilities in the public interest. It applies to compliance, recognition of marketing communications, misleading advertising, harm and offence, children, privacy, political advertisements, promotional marketing, distance selling, database practice and
environmental claims. The specific products rules would also be applied to online advertising when the product has been categorized such as medicines, medical devices, health-related products and beauty products, weight control and slimming products, financial products, food, food supplements and associated health or nutrition claims, alcohol, motoring, employment, homework schemes and business opportunities, and tobacco, rolling papers and filters.

It is interesting in the sense that the Thai law allows the control or monitoring of online advertisement but unlike the UK we do not have specific regulations concerning the screening of online advertising content. It can be concluded that when comparing the relevant regulations of the UK and Thailand, Thailand still lack the definition of online media in the media advertising laws. Furthermore, the prohibition rules for controlling advertising are very outdated. Thailand could use the UK advertising code as a model in order to amend our present laws as seen appropriate.

5.2 Recommendations

The researcher has divided the analysis of the research scope into two main parts and is in the view that the following recommendations would enable us to solve the legal problems that arise from online advertising by using the United Kingdom regulation as a model to adapt our current laws on controlling online advertising.

5.2.1 Pass a Specific Law Concerning Online Advertising

Because Thailand has no specific law on controlling information in online advertising it would be worth exploring UK’s Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing to propose a new regulation that focus on consumer protection from online advertising. The researcher is in the view that Thailand shall enact a new law focusing on screening content of online advertisements. It shall be called “Content Control/Screening of Online Advertisement Act B.E…….” Thailand could adapt the definition of media advertising, the general rules and specific rules of the UK model.

The UK Non-Broadcasting Advertising, Sale Promotion and Direct marketing Code belonging has a definition for media communication. The code stated
that “d. advertisements in non-broadcast electronic media, including but not limited to: online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements); paid-for search listings; preferential listings on price comparison sites; viral advertisements (see III 1); in-game advertisements; commercial classified advertisements; advergames that feature in display advertisements; advertisements transmitted by Bluetooth; advertisements distributed through web widgets and online promotions and prize promotions”. The herewith stated definition is very clear and refers to all forms of online advertisements.

5.2.2 The Principles of Controlling Related Online Advertisement Act

The principle of the new act related to monitoring and screening online advertisements could include the same four forms as stated earlier, namely, to screen text, picture, voice and motion picture. For the prohibition rules, it would be best to also divide it into the same four categories. There should be clear provisions on the general rules for general products and services, specific rules for certain products, and prohibition of what is not permitted under any circumstances. This method will cover all online advertising in every form and all products especially important products.

1. General Products Rule

Because it is a new regulation, we could apply the general rules of the UK model by considering the Non-Broadcasting Advertising, Sale Promotion and Direct marketing Code as well as the prohibitions. The UK model has enforced the general and specific rules very efficiently and clearly.

In the part of general rule, the United Kingdom Advertisement Code included compliance, recognition of marketing communications, misleading advertising, harm and offence, children, privacy, political advertisements, promotional marketing, distance selling, database practice and environmental claims which we could also adopt to resolve the legal issues related to online advertising in Thailand. In addition, it gives a direct duty to the advertisers who will also have to be more aware

*Non- Broadcast Advertisement, Sale Promotion, and direct marketing Code 2008.*
of social responsibilities toward the public once they are posting an advertisement online... The same rules and standard, in result, will be adopted for both general and specific products and services.

Considering the UK Code as a suitable model that applies to all important circumstance in online media, it would be beneficial for Thailand to adopt from the UK model.

2. Specific Products Rule

When looking at the UK model in relation to the specific products rules, it comes to my surprise that some of the products are products that we see to be for sale very regularly. The headings always seem very persuasive but *not* to be real to lure internet users into believing such advertisement. Therefore rules to screening advertisement's information for important product are very crucial and necessary.

For the part on specific products, Thailand could adopt the rules for some of the products that the UK Code contain such as medicines, medical devices, health-related products and beauty products, weight control and slimming, financial products, food, food supplements and associated health or nutrition claims, motoring, employment, homework schemes and business opportunities, alcohol and tobacco. As it is illegal to advertise about gambling and there is still an underground lottery market in Thailand, we may have to deliberate them separately in another part of the regulation. The UK may be able to enact rules that control content on online advertisements for important products such as medicines, medical devices, health-related products and beauty products, weight control and slimming, financial products, food, food supplements and associated health or nutrition claims, motoring, employment, homework schemes and business opportunities, gambling, lotteries, alcohol, tobacco and rolling paper and filters but Thailand still does not allow under any circumstances to publicize about specific products or services.

3. Prohibited Products Advertisement

Because Thailand still prohibits advertising about some products and services, we may require a separate part in the "Controlling of Content of Online
Advertisement Act B.E…..” regulation that stipulates the products that has been prohibited to advertise on online media platform. Thailand prohibits the publicizing of the products and services such as tobacco, gambling, lotteries, arms, prostitute, aphrodisiac medicine and etc. In order to comply and adapt the regulations with the Thai context, these products and service should also not be permitted to be publicizing in online media in Thailand. Therefore, the new regulation to control the online advertisement must enacted the prohibit rule for these products clearly and cover all of them.

5.2.3 The Authority Organization Motoring The Controlling Related Online Advertising Act B.E…..

The United Kingdom's Non-Broadcasting Advertising, Sale Promotion, and Direct Marketing Code have a self-regulatory body. The benefit of such body is that it can resolve the issues instantly without requiring using state punishment. This organization is cooperation between relevant stakeholders that screen the content of online advertisements before and after it has been published.

Thailand may not be in the position to set up another body focusing on controlling the content on online media platforms, but we may want to consider the use of state statutory, meaning, having a relevant state law to support the controlling of content of online advertisements. For example, there are many advertising organizations that belong to the private sector. They crated the ethic in their organization for motoring advertisement. However, there are still amiss advertising on television, radio, and print matter, and including product placement in mass media in recently, that mean their ethic cannot protect the unsuitable advertisement. For this reason, the researcher thinks that once an efficient resolution with these specific rules to control content of online advertisements has been enacted internet users, products owners and advertisers are treated fairly.

Because this law set out the rules not only for the consumers and entrepreneurs but it will also apply to advertisers and internet users, the Office of The Consumer Protection Board may not be the most suitable body to execute this law. However, since this law is related directly to the only platform and the internet system, we may consider the Ministry of Digital Economy and Society (MDES), since they
monitor the online and internet traffic. The MDES is a state organization which has authority to control digital information and online communication in Thailand.

Nevertheless, keeping in mind, that online communication is globally operated, there may be cases where a website has been set up in a foreign country. In my view, these shall not be considered within the scope of this research due to the circumstances.

For the final quote

This research has discovered another legal problem regarding the internet regulation in Thailand. The issue is that regulations are overlapping or conflicting in content with one another. Also; some content on the internet requires rule to control the content, as following:

1. Thailand has a Computer-related Crime law that can apply to online media; however, when comparing it with similar regulations of other countries, the objective of this particular act varies with the objectives of other countries.

   The Computer-related Crime law or Computer Misuse was enacted for the purpose to punish offenders who damage another person's computer system, steal personal computer data, and etc.

   When examining Section 30 of the Thai Computer-related Crime law more closely, it stood out that it overlapped or conflicted with other areas. For example, the lawyer has used this regulation to enforce to an online advertising related matter, but advertising was not the factual matter we require to punish the advertisers. This matter would require a set of rules that state how such thing can be prevented before it has been put online, we require people who screen and monitor that an advertisement before publishing remains once uploaded. Punishment may not be the right way to reduce these problems but educating them about the social responsibility toward the public or the impact of such advertisements that it could resulted to.

   Therefore, the Computer-related Crime Law should not be enforced for commercial marketing purposes as its overlap with regulations in other areas for the wrong objective.

2. There are many video clips on the website that have similar content to television program, but such content is not regulated for monitoring of such content.
The website “Youtube” is a very popular website in Thailand with around 87% of internet users from Thailand. Youtube has created a marketing strategy where it promotes that video clips with lot of viewers will be receiving money in return. This has led to Thai people starting to upload more and more video clips online and create their own Youtube channel. These channels are similar to television program. These channels have not been stipulated in any regulation. The concern for these channels is that sometimes rude languages may be used which is unsuitable for audiences that are children and teenagers. Moreover, people have turned to these Youtube channels to promote their own products.

Therefore, it would be useful to have a regulations that monitors the content of these Youtube channels, as well as, clearly separate the content of the program with the advertisements to comply with the Broadcasting and Television Business Act B.E.2551.
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