



THE CONSUMER PROTECTION ON ELECTRONIC
COMMERCE : CASE STUDY OF THE ADVERTISEMENT ON
THE INTERNET

BY

MR. PRACHAYA PAIROJKULMANEE

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

GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY

AUGUST 2005

**THE CONSUMER PROTECTION ON ELECTRONIC
COMMERCE : CASE STUDY OF THE ADVERTISEMENT ON
THE INTERNET**


**BY
MR. PRACHAYA PAIROJKULMANEE**

**AN INDEPENDENT RESEARCH PAPER SUBMITTED IN
PARTIAL FULFILLMENT OF THE REQUIREMENT
FOR THE DEGREE OF MASTER OF LAWS
(IN BUSINESS LAW)**


**GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY
AUGUST 2005**

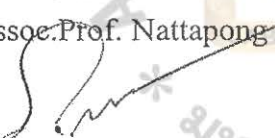
Research Title: The Consumer Protection on Electronic Commerce: case study
of the Advertisement on the Internet
Author: Mr. Prachaya Pairojkulmanee
Major: Business Law (International Program)
Advisor: Ms. Sarunwan Chotenimitkhun

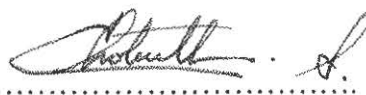
Faculty of Law, Assumption University approves this Independent Research
Paper as the partial fulfillment of the requirement for the Degree Master of Laws.


..... Director of the Graduate School of Law.
(Assoc.Prof. Nattapong Posakabutra)

Committees.


..... Chairman.
(Assoc.Prof. Nattapong Posakabutra)


..... Committee.
(Mr. Sthianrapab Naluang)


..... Advisor and Committee.
(Ms. Sarunwan Chotenimitkhun)

Independent Research Title: The Consumer Protection on Electronic commerce:
case study of the Advertisement on the Internet

Student Name: Mr. Prachaya Pairojkulmanee

Degree: Master of Laws (International Program)

Advisor: Ms. Sarunwan Chotenimitkhun

ABSTRACT

This independent research paper aim to study principle and concept of the consumer protection on electronic commerce especially, the advertisement of the electronic commerce on the internet that Thailand does not have sufficiency of the specific law about the consumer protection on electronic commerce and the insufficiency of the specific organization to monitor or protect the consumers which most of the internet users on electronic commerce do not have enough acknowledgment about the electronic commerce on the internet.

Furthermore, Thailand does not have the self regulatory to protect and give the confidence to the consumers that the consumer's confidence is the important factor of the consumer's decision. These are the factors that effect to the growth of the number of consumer who use electronic commerce and the development of the electronic commerce in Thailand. Although, the electronic commerce does not favorite but in a little number of consumers, they got a lot damage from purchase goods through the internet.

Consequently, the government and other sectors should concentrate to the problems of the consumers by:

1. The Thai Government should amend and issue a new law of consumer protection about the advertisement of the electronic commerce on the internet and setting up a specific organization to protect internet users.
2. The industry sector should have self regulatory.

3. The Government and private sectors should campaign and give the education about the electronic commerce on the internet to consumers.



ACKNOWLEDGMENTS

I would like to express my appreciation and gratitude to those who have assisted me, either directly or indirectly, in the successful completion of this research paper.

First of all, I am extremely grateful to Dean Pornchai Soonthornpan, Director Nattapong Posakabutra in LL.M. Program and all Professors who have taught me through the academic year 2004. I would like to express my deepest gratitude to A. Sarunwan Chotenimitkhun, my research advisor, for her valuable suggestions, knowledge, inspiration and continuous encouragement given to me from the start until the completion of this research paper.

I wish to express my sincere thanks to the faculties of Indiana University at Bloomington, School of Law, Especially, I would like to thanks Dean Davis and Catherine, who are the term at Indiana University at Bloomington, School of Law, where I have just been in May 2005 for my research trip in U.S.A.

My special thanks and appreciation go to my friends, classmates who always give me inspiration, kind assistance and their support especially to Ms. Onchalee Rattanachirasood who edited my work and kind help.

Finally, I would like to express deepest gratitude to my beloved family who have nurtured and support throughout my life, without which it would have been impossible to carry out my studies at Assumption University.

The Contents of Independent Research Paper

	Page
Abstract	i
Acknowledgment	ii
The Contents of Independent Research Paper	iii
Chapter 1 Introduction	
1.1 The background and general	1
problems of Electronic Commerce	
1.2 Objective	4
1.3 Hypothesis	5
1.4 Scope of the research paper	5
1.5 Methodology	5
1.6 Expectation of the research paper	6
Chapter 2 The concept of the Consumer Protection law as to Electronic Commerce on the internet.	
2.1 The types and concept the transaction	7
of Electronic Commerce	
2.2.1 The electronic commerce on the internet	7
Innovation Centre	
2.2.2 The Organization for Economic Co-Operation	8
and Development (OECD)	
2.2 The concept of the consumer protection about	13
the electronic commerce on the internet	
2.3 The problems about the electronic commerce on the internet	18
in Thailand and other countries.	
2.3.1 Internet Auction Fraud	19

2.3.2	Internet Service Provider Scams.....	19
2.3.3	Credit Card Fraud.....	19
2.3.4	International Modem Dialing.....	19
2.3.5	Web Cramming.....	19
2.3.6	Multilevel Marketing Plans.....	20
2.3.7	Work at Home.....	20
2.3.8	Domain Name Registration Scams.....	20
2.3.9	Miracle Products.....	20

Chapter 3 The Comparative study about the consumer protection of the electronic commerce on the internet

3.1	The scope of Thai consumer protection law about.....	23
	the electronic commerce on the internet.	
3.2	The scope of US law about the consumer protection of.....	28
	the electronic commerce on the internet.	
3.3	Comparing the consumer protection about the electronic.....	33
	commerce on the internet between Thailand and U.S.A.	

Chapter 4 Analysis of the problems about consumer protection on advertisement of electronic commerce on internet

4.1	The loopholes of the Thai consumer protection law.....	36
	about the electronic commerce on the internet.	
4.1.1	Enforcement and Organization.....	37
4.1.2	Education and Development.....	37
4.1.3	Self-regulatory.....	37
4.1.4	Others.....	37
4.2	The weakness and uncertain authority of organization.....	38
	in Thailand	
4.3	The confidential of consumers.....	39

Chapter 5 Conclusion and Recommendation

5.1	The conclusion.....	41
5.2	The amendment and enact consumer protection law about..... the electronic commerce on the internet and conduct a specific organization.	45
5.3	The self-regulatory.....	45
5.4	The Government and private sectors should campaign and..... give the acknowledgement about the electronic commerce on the internet to consumers.	46



Chapter 1

Introduction

1.1 The background and general problem of electronic commerce on the internet

For the last ten years, internet has become an essential part of our styles for communication. In 1969 U.S. army launched the project “Advanced Research Project Agency Network” (ARPAnet) for communicating within their group and developed it for the public communication.¹ Internet is one of the networks that connect the network of computer around the world. Since 1990, it has been developed World Wide Web and Web Browser that makes the internet favorite in everywhere around the world.

At present, the internet has increased rapidly in every country. Everybody around the world can communicate to each other face-to-face. Moreover, it is not only for communicating but also for using in various ways. For instance, Electronic Data Interchange (EDI), Electronic Fund Transfer and in term of business sector known as “electronic commerce” or called “E-Commerce”. It has over 70 million websites offering all of services and products, ranging from books and music to wine and art.²

In the countries that develop their economies, the electronic commerce on the internet increases the efficiency in conducting business and reducing transaction cost, both of which enhance overall competitiveness. Companies in these economies are adopting

¹ Prachuab Wongsas, “Legal Measures Regarding Consumer Protection on Internet Auction” (Master of Laws, Dissertation, Ramkhamhaeng University, 2004), p. 22.

² CommerceNet, “The Internet Domain Survey”, In <http://www.commerce.net/research/stats/results.html>, Access date May 2, 2005.

the electronic commerce on the internet very quickly especially the international firms. For example: General Electric (GE).

Further, the adoption of electronic commerce on the internet in developing economies inevitably increases the pressure to the Asia companies that trade extensively with them. For instance, a whole sale and retail trade in pharmaceutical, automobile, and electronics industries are under much pressure that the companies must adjust in order to maintain their status as the supplier companies around the world. The Asia companies do not have any choice. They have to upgrade their technology and marketing capabilities and modify their business models because of the fast approaching information era. Unless they join the electronic supplied chain, they will lose comparative advantages as the suppliers which are cheap and high quality parts and are the raw materials to large multinational corporations. They will have a “lost opportunity”.

For this reason, it is worried that Thailand leg are behind other Asia countries in adapting the electronic commerce on the internet often comparing with Japan, South Korean, etc. Thailand's rank is near the bottom of the Asia economies in the number of internet hosts per capita. However, for the last few years the number of the internet users in Thailand had increased more than the number of the internet users in the past. According to the research of the National Development Resource, it expected the number of the internet users in Thailand in 2000 were approximately 700,000 and will be increased around 30 percent in the early of 2001 (900,000 internet users). Furthermore, in 2002 the number of internet user will be 1,200,000.³ Although, the number of the internet user increase rapidly but doing business through electronic commerce on the internet was not popular as the number of the internet user. According to the research of the electronic commerce on the internet Resource Center (ECRC) shows the number of website that is electronic commerce on the internet had

³ Somkiet Tangkitwanit, “The Expectation of The Internet User In Thailand 2000-2005” The National Development Resource of Thailand, September 2542, p. 19.

only 6 percent (187 websites) of 3,120 website. It can be classified types of industries that act as electronic commerce on the internet by ⁴:

a) Computer industry	17 %
b) Service industry	16 %
c) Travel and hotel industry	12 %
d) Health and hospital industry	7 %
e) Entertainment industry	5 %
f) Others	43 %

Based on the number above, it shows the private sectors and the government do not concentrate to the advantage of the electronic commerce on the internet and the development of knowledge of the consumers about internet in Thailand does not follow the technology of the internet. It seems to be the important problems. Moreover, the law is insufficient to protect the consumers about the advertisement of electronic commerce on the internet and the organization is insufficient to look after the consumers and there is the lack of self-regulatory. All of them are the serious problems. Consequently, the consumers do not have confidence to purchase goods or services by electronic commerce on the internet. The confidence of consumer on advertisement of electronic commerce on the internet is the important factor for consumer's decision in using the electronic commerce on the internet as a transaction in doing business, purchasing goods or services, etc. However, Thai government has recognized the importance of the electronic commerce on the internet. It is the way to make the consumers feel confident on the electronic commerce on the internet by launching the IT 2010: National IT Policy Framework including the National ICT Master Plan (2001-2006) to the 9th National Social and Economic Development Plan (2001-2006). It shows the vision of the government on the electronic commerce on

⁴ Electronic Commerce Resource Center, "The Research of the electronic commerce in Thailand", 2542. In <http://www.ecommerce.or.th>, Access date May 3, 2005.

the internet after the plan was launched above. The government conducted a few specific organizations to look after the electronic commerce on the internet⁵. For instance:

- a) The National Information Technology Committee (NITC)
- b) National Electronics and Computer Technology Center (NECTEC)
- c) Advertisement of electronic commerce on the internet Resource Center (ECRC).

However, these organizations do not have duty to look after or protect the consumers when the consumers get any damage from using the electronic commerce on the internet. Thailand does not has any specific organization to look after the consumers as to advertisement of electronic commerce on the internet. Although Thailand has the consumer protection board to protect the consumers in general area including the advertisement of electronic commerce on the internet established by the Consumer Protection Act BE. 2522. However, it can not solve these problems. Therefore, this problem will affect the development of the electronic commerce on the internet and the economic of Thailand in the future.

1.2 Objective

- 1.2.1 To study the definition and transaction of the advertisement of electronic commerce on the internet and indicate the problems.
- 1.2.2 To study the concept of the consumer protection about the advertisement of electronic commerce on the internet.

⁵ Somkiet Tangkitwanit, "The Competition of The Advertisement of electronic commerce on the internet In Thailand: Recommendation and Strategy" The National Development Resource of Thailand, January 2543, p. 5

- 1.2.3 To study the scope of the Thai Law and the U.S. law of the consumer protection about the advertisement of electronic commerce on the internet.
- 1.2.4 To compare between the Thai law and the U.S. law of the consumer protection about the advertisement of electronic commerce on the internet.
- 1.2.5 To suggest the solution for consumer protection about advertisement of electronic commerce on the internet in Thailand.

1.3 Hypothesis

The Law of the consumer protection about the advertisement of electronic commerce on the internet in Thailand is insufficient to protect the internet users. Additionally, the official legal authority that has the power to protect the consumers is not familiar with the new transaction on the advertisement of electronic commerce on the internet and the industry has no self-regulatory to control the advertisement of electronic commerce among them. Therefore, Thailand should amend the specific laws, setting up specific organization and introduce the self-regulatory for the industry to protect the consumers on advertisement of electronic commerce on the internet.

1.4 Scope of the research paper

This research paper studies the consumer protection on the advertisement of the electronic commerce on the internet. The other transactions about the electronic commerce on the internet are not concern. It studies the Consumer Protection Act B.E. 2541.

1.5 Methodology

The method used in this research paper is Documentary Research. It will survey on the Consumer Protection Act B.E. 2541, Thai journals, foreign journals, and books,

articles in the magazines, dissertation, unpublished manuscript, internet and interview from the officer and the lawyer who are the specialists on the electronic commerce on the internet.

1.6 Expectation of the research paper

- 1.6.1 To know the definition and transaction of the advertisement of electronic commerce on the internet and indicate the problems.
- 1.6.2 To know the concept of the consumer protection about the advertisement of electronic commerce on the internet.
- 1.6.3 To know the scope of the Thai Law and the U.S. law of the consumer protection about the advertisement of electronic commerce on the internet.
- 1.6.4 Find out the different between Thai law and the U.S. law of the consumer protection about the advertisement of electronic commerce on the internet.
- 1.6.5 To recommend the way to solve for the consumer protection about advertisement of electronic commerce on the internet in Thailand.

Chapter 2

The Concept of the Consumer Protection Law as to the Electronic Commerce on the Internet

2.1 The types and concept of the transaction about the electronic commerce on the internet

The electronic commerce is a form or route to buy goods, information and service through the internet network which has a lot of types. For instance: buying goods, auction, finding jobs etc. However, we have definition of the electronic commerce on the internet defined by many organizations are as follows;

2.1.1 The electronic commerce on the internet Innovation Centre

The electronic commerce on the internet Innovation Centre has been given the definition that “the enablement of a business vision supported by advanced information technology to improve efficiency and effectiveness within the trading process” or “electronic commerce on the internet is having a major impact on how businesses work. Payment systems, process support and customer information are all affected by the extraordinary growth of the electronic commerce on the internet”⁶

⁶ Vudhipong Thow-Wadhana, “Advertisement of electronic commerce on the internet: A Case Study of Abusing Of Credit Card On Internet” (Master of Laws, Dissertation, Chulalongkorn University, 2001), P. 15

2.1.2 The Organization for Economic Co-Operation and Development (OECD)

The Organization for Economic Co-Operation and Development (OECD) has provided the definitions of electronic commerce on the internet given by various sources which differed significantly. Some includes all financial and commercial transactions that take place electronically, including electronic data interchange (EDI), electronic funds transfers (EFT), and all credit/debit card activity. Others limit electronic commerce on the internet to retail sales to consumers for which the transaction and payment take place on open networks like the Internet.⁷

Mostly, the United States of America define the electronic commerce on the internet as an activity of business that uses the electronic commerce on the internet as an advertisement, purchasing and payment for goods or services. It can be divided into 4 parts as follows⁸ ;

- 1) The delivery of actual service. For instance, download software of movie or music; announce the news, education, recommendation, and money consultant through internet.
- 2) The relationship between buyer and seller through internet.
- 3) The retail business through internet.
- 4) The business concentrated on the group of person who has the same benefit.

⁷ The Defining and Measuring E-Commerce: A Status Report, In [Http://www.oecd.org](http://www.oecd.org), Access date May 3, 2005

⁸ Thow-Wadhana Vudhipong, *Supar* note 6, p. 15.

Narrowly defined, electronic commerce on the internet is the conduct of business on-line that is sell and buy goods and services through the internet. The traded products may be corporeal property such as books, CD, medicine, foods. Also, services such as travel and information services becoming an essential part of the business especially travel industry in order to give the information about traveling place, hotel and any promotion.

Someone said "What is the best way for you to communicate with others in business?" The best way is face to face. Body languages, tone of voices, and facial expressions help you understand what the other person try to communicate with you. When you cannot meet face to face, you may use a number of different means to communicate: a telephone, a fax machine, post service, or even a messenger service.⁹ These are the ways to deliver or receive information, authorization, and shipments of goods and merchandise. The electronic commerce on the internet is a reasonable alternative for the new transaction of business.

The concept of the electronic commerce on the internet is all about using the Internet to do business better and faster. It is about giving customers to control access to their computer systems and letting them serve themselves. It is about committing your company to a serious online effort and integrating your Web site with the heart of your business. Consequently, the electronic commerce on the internet creates a lot of benefits for human as the OECD said that¹⁰ "there is great potential for this new commercial tool to change the economic landscape, allowing goods and services to be delivered to a market that largely ignores political and geographic barriers--improving productivity and communication and providing global market access to businesses

⁹ The Definition of E-Commerce, (BusinessTown.com), In <http://www.businesstown.com> , Access Date May 4, 2005

¹⁰ Organization for Economic, Co-Operation and Dev. (Executive Summary, in Gateways, *supra* notes 3), p 7. In <http://www.oecd.org> ,Access Date May 4, 2005

and consumers worldwide." This new commercial tool offers many opportunities to businesses and correspond benefits to consumers. It can be explained into 6 points¹¹:

- 1) Worldwide access and greater choice.
- 2) Enhanced competitiveness and quality of service.
- 3) Mass customization and personalized products and services.
- 4) Elimination of intermediaries and product availability.
- 5) Greater efficiency and lower costs.
- 6) New business opportunities and new products and services.

Because of the transaction of the electronic commerce on the internet has the objective for business that the characteristics of the electronic commerce on the internet can be divided from their relationships that is usually referred to as¹²:

- 1) Business to Business (B to B)

E-commerce focuses on supplying chain management and customer relationship management among companies, branch etc.

- 2) Business to Customers electronic commerce (B to C)

It focuses on transaction among sellers being a medium or small business and customers. For instance, advertising products or services through internet, buying goods or service and payment by credit card through internet. This is a main proportion of the electronic commerce on the internet market which has been increased rapidly for five years.

¹¹ Karen Alboukrek, "Adapting To a New World of E-commerce: The Need For Uniform consumer Protection In The International Electronic Market Place", George Washington International Law Review, 35 2003, pp. 429-431.

¹² Wongsapachub, *supra* note 1, pp. 65-66.

3) Customer to Customer electronic commerce (C-to-C)

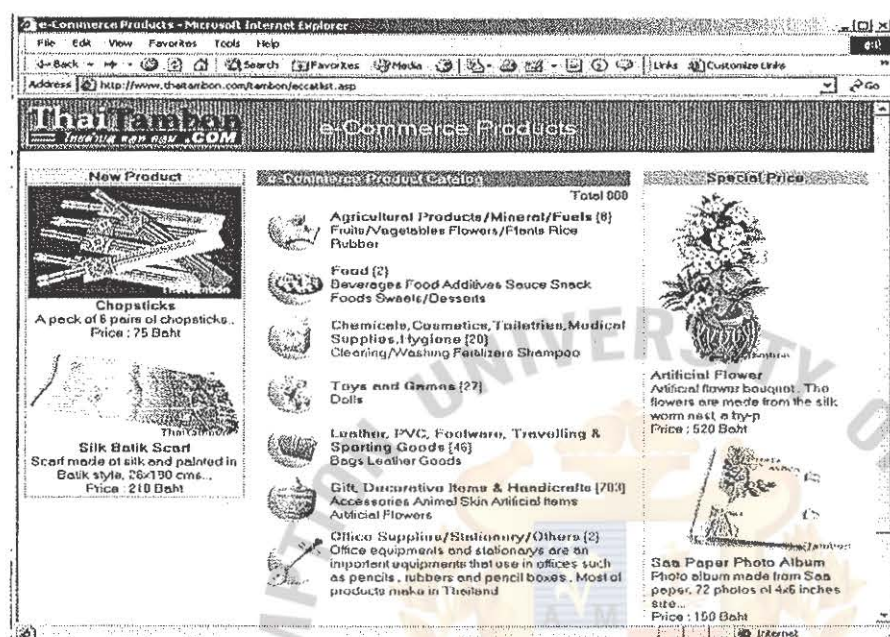
It focuses on direct sale between buyer and buyer that is an informal business. For instance, internet auction.

These forms of the electronic commerce on the internet are growing very fast due to the proliferation of the internet especially the last two transactions as mentioned above. For more understanding of the process of the electronic commerce on the internet, it consists of seven processes:

- 1) The owner conducts the website or homepage through the internet for advertising their goods or services.
- 2) The consumers are looking for information or detail of goods or services through the website or homepage.
- 3) The consumers contact to the owner for more information. For instance, the quality of goods, discounts and delivery etc.
- 4) The buyer (consumer) orders the goods and indicates the way to payment. For instance, credit card.
- 5) Bank examines the credit of the buyer and reports to the seller (owner)
- 6) Seller delivers goods to buyer.
- 7) Seller contacts to buyer for after service.

In Thailand, according to IT 2010: National IT Policy Framework, The National ICT Master Plan (2001-2006) to The 9th National Social and Economic Development Plan (2001-2006). Furthermore, The Thai government by Prime Minister Thaksin Shinawatra, and Community Development Department support the development about products champions of each district or One Tambon One Product (OTOP). Most of the products come from community (e.g. house wives, farmers, local handicraft groups, etc.). In August 2002: 5,285 districts - 17,094 products and 6,978 local

tourists are attracted and at the end of 2002: All 7,000 districts will be included in this project.¹³

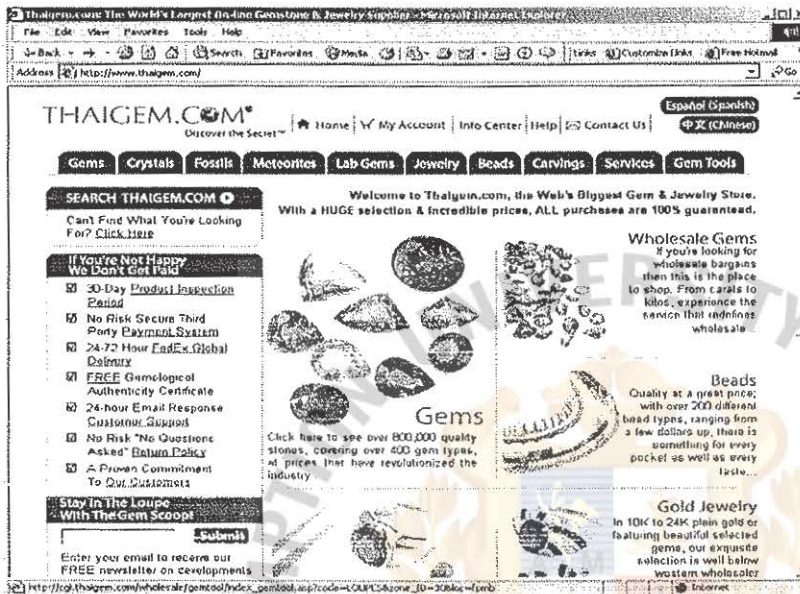


This is the example homepage of --www.ThaiTambon.com that will make various ways for advertisement of the products to other countries. It will help to increase GDP of Thailand because it is the way to bring the foreign money or investor to Thailand. However, the Thai government does not only support the grass root level but also support the specific industrial sectors¹⁴. For instance: the electronic commerce on the internet for Fashion (Gems, Jewelry, Clothes, etc.), E-Tourism etc. One of the success companies is ThaiGem.com. They became the world's largest market share on online gems & jewelry. They bring huge foreign money to Thailand.

¹³ Somnuk Keretho, "Thailand E-commerce Strategies" (Power Point presented at the APEC Workshop on e-Business and Supply Chain Management, Bangkok, Thailand), 28-30 August 2002.

¹⁴ Keretho Somnuk, *supra* note 13.

Nevertheless, the role of Thai government to support the electronic commerce on the internet does not success when looking at the number of the internet user on the electronic commerce on the internet.



This is the example -- www.ThaiGem.com.

2.2 The concept of the consumer protection about the electronic commerce on the internet

The electronic commerce on the internet has become the theme of discussions in major international forums. Taxation, telecommunication infrastructure, information security, legal authority, fraud, consumer protection and legal policy are the most controversial factors affecting the success of the electronic commerce on the internet¹⁵. Most economics are tackling these issues and trying to develop the

¹⁵ Thaweesak Koanantakool, Director National Electronics and Computer Technology Center, "Advertisement of electronic commerce on the internet development in Thailand", May 22, 1999, In <file://localhost/C:/Documents and Settings/ACER/Desktop/research paper/E-Commerce in Thailand.htm> , Accessed date December 1, 2004

national frameworks by using all of the necessary techniques and the policy infrastructures. One root element addressed among users to promote the widespread use of the electronic commerce on the internet is trusted.

Consequently, the development of the electronic commerce on the internet depends on the confidence of the consumers and other factors. The consumer protection is the tool to make consumer's confidence. The roles of the consumer protection have been discussed in widespread. For instance:

- 2.2.1 UNCITAL: Model Law on the electronic commerce with guide to Enactment 1996
- 2.2.2 WTO: Ministerial Conference, Declaration on Global electronic commerce, Adopted on May 1998
- 2.2.3 APEC: Workshop on electronic commerce Policy and Regional Cooperation 19-21 June 2002: Bangkok, Thailand
- 2.2.4 OECD: Guidelines For Consumer Protection In The Global electronic commerce in 1999
- 2.2.5 ICC: Guidelines on Marketing and Advertising on The World Wide Web

These are the part of the International Organizations that concentrate on the electronic commerce on the internet that are the model of the national level and private sectors. Therefore, this part will explain about the role of the International Organization related to the consumer protection about the electronic commerce on the internet.

In April 1998, the Organization for Economic Co-Operation and Development (OECD) Committee on Consumer Policy started to construct a set of general guidelines for regulating cross-border transactions in the electronic marketplace¹⁶ and

¹⁶ The Organization for Economic (Recommendation of the OECD Council Concerning Guidelines for Consumer Protection in the Context of Advertisement of

to conduct the fundamental principle of the online shops. Rather, the OECD Guidelines provide a blueprint for governments as they formulate and implement consumer protection for the electronic commerce on the internet.¹⁷

One of the standard rules in the OECD Guidelines is the act in accordance with fair business, advertisement, and marketing practices.¹⁸ It means that business should not make any representation that is likely to be misleading, fraudulent and unfair contract terms. The OECD Guidelines also suggest providing appropriate online disclosure about the companies, their goods and services, and the terms and conditions of the transactions. These requirements take to the principle that consumers should receive sufficiently information to enable them to make a decision whether they should purchase a particular item online. Another standard are set the OECD Guidelines including establishment of clear mechanisms for confirming transactions and securing payment online. In the Article IV states a consumer should be able, before concluding the purchase, to identify the goods which he wishes to purchase, express an informed and deliberate consent to the purchase. With respect to securing of the payment online, the OECD Guidelines recommend and encourage the limitations of liability for unauthorized or fraudulent use of payment system.¹⁹

Other standards described in the OECD Guidelines include developing policies, law and regulation, procedures for alternative dispute resolution, self-regulation, codes of conduct, trust mark program, Global co-operation, conduct electronic commerce on the internet in accordance with the privacy principles described in the OECD Guidelines for Consumer Protection. In The Context of The Electronic Commerce on

electronic commerce on the internet, 1999), In
<http://www.ftc.gov/opa/1999/9912/oecdguide> , Access date December 23, 2004.

¹⁷ Alboukrek Karen, *supra* note 11, p. 445.

¹⁸ The Organization for Economic, (OECD Guideline), In <http://www.oecd.org>
 , Access date December 23, 2004

¹⁹ Alboukrek Karen, *supra* note 11, p. 445-446

the Internet, 2001²⁰ has activities and initiatives of government and the private sector to promote and implement the OECD guideline.

As mentioned above, the OECD guideline is the important guideline or model to be the principle of consumer protection about the advertisement of electronic commerce on the internet in many countries especially the United States of America having follow-up work on the guidelines focusing on other areas. Upon adoption of the guidelines, press releases were issued by the public and private sectors. The Federal Trade Commission (FTC) has developed a variety of business and consumer education materials that are available on its Web site and at www.consumer.gov, a Web site maintained by the Federal Trade Commission that provides consumer information from more than 135 federal and state government agencies.

The United States government has also continued to strengthen and expand international co-operation arrangements and engage in multilateral law enforcement co-operation, as called for by the guidelines.²¹ The effort has included conducting Internet investigations training to teach authorities about tools to detect and to prevent Internet fraud, sponsoring Internet surf days, and working with colleagues in the IMSN to promote co-operation and information sharing. For example, the FTC coordinated a year-long law enforcement effort targeting the top 10 Internet scams, which involved five federal United States agencies, consumer protection organizations from nine countries and 23 states. Announced in October, the effort involved 251 law enforcement actions against online scammers in "Operation Top Ten Dot Cons." Participants in "Operation Top Ten Dot Cons" included consumer

²⁰OECD Guidelines for Consumer Protection in the Context of Advertisement of electronic commerce on the internet, In [http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/DSTI-CP\(2000\)7-FINAL](http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/DSTI-CP(2000)7-FINAL), Access date May 2, 2005

²¹ The FTC signed two agreements with the Australian Competition and Consumer Commission ("ACCC"), In <http://www.ftc.gov/opa/200/07/usacccc.htm> , Access date November 23, 2004

protection agencies from Australia, Canada, Finland, Germany, Ireland, New Zealand, Norway, the United Kingdom and the United States. Domestically, the FTC has brought more than 167 actions involving Internet fraud against more than 562 defendants.

Furthermore, the FTC issued a report on consumer protection in the global electronic marketplace, including Internet jurisdiction.²² With respect to consumer redress, the FTC and Department of Commerce held a workshop on alternative dispute resolution in June 2000. Moreover, in February 2001, the FTC sponsored a public roundtable to explore private sector ADR recommendations and jurisdiction over business-to-consumer contracts in the context of the draft Hague Convention on Jurisdiction and Foreign Judgments.²²

The US private sector also is working to implement the Guidelines. Several industry groups, in close consultation with government and consumer representatives, developed business-to-consumer codes of conduct for online commerce. For example, the Better Business Bureau Online requires adherence to its newly developed code of business practices as a requirement for its reliability seal program, which already is carried by 4,800 companies.²³ And the electronic commerce on the internet and Consumer Protection Group, which formed around the completion of the guidelines, developed a business-to-consumer code of conduct that includes principles for dispute resolution.²⁴ The private sector also has introduced a variety of education initiatives including posting shopping tips on company Web sites, in banner ads and providing information through links and e-mail responses. In addition, the National

²² The Committee on Consumer Policy, "OECD Guidelines for Consumer Protection in the Context of Advertisement of electronic commerce on the internet (the Guidelines)" (Paper presented at the 58th Session of the Committee on Consumer Policy (CCP)), in March 2000 p. 23.

²³ <http://www.bbbonline.or> Access date September 2, 2004

²⁴ <http://www.ecommercegroup.org> Access date September 3, 2004.

Consumers League (NCL) launched education initiatives related to e-commerce, including a “Be E-Wise” program, which provides tips for safe online shopping, and a recent campaign on safe ways to pay in online auctions.²⁵

This is the one example on the national level that the United States is the leader in the scope of the electronic commerce on the internet of the world. However, the European and Asia have also recognized to the importance of the consumer protection about the electronic commerce on the internet and follow up the OECD guideline. For instance, Australia, Austria, Canada, Finland, Hungary, Ireland, Japan, Korea, Mexico, New Zealand, Norway, Portugal, Spain, Switzerland and Thailand.

2.3 The problems about the electronic commerce on the internet in Thailand and other countries.

The electronic commerce on the internet is the conduct of business on-line that is about selling and buying goods and services through the internet which users complain of being unable to touch or closely examine a product and misinformation of products when they are online. Moreover, they are reluctant to provide a credit-card number that is the source of the fraud or any damage on the electronic commerce on the internet. Consequently, the evolution of the virtual shopping on the World Wide Web gives raise the new and complex consumer protection issues²⁶. For instance:

2.3.1 Internet Auction Fraud

Internet Auction Fraud is advertisement of the product through the web site that uses auction as a tool between a seller and a buyer but the buyer will not get the rights or the lower quality of goods.

²⁵ <http://www.nclnet.org/BeEWISBroch.html> Access date October 3, 2004.

²⁶ Ten Frauds on the Internet, (Advertisement of electronic commerce on the internet Resource Center (ECRC), In <http://www.ecommerce.or.th> , Access date December 24, 2004.

2.3.2 Internet Service Provider Scams

Internet service provider scams is the fraud in form of internet service offering their service without fees to an internet user. However, if the user used their service, he will get a bill from them.

2.3.3 Credit Card Fraud

The buyer must inform the information of their credit card or any information and then the website will use their information for purchase any goods or service without their authority which they will lose their money and any damage.

2.3.4 International Modem Dialing

The adult web site offers without any fee for consumers but the customers must download their program which use the internet that programs will control your modem and connect by using an international call (long distance call). You will get a bill in a big amount.

2.3.5 Web Cramming

They offer free internet space for a new web page and without any obligations and then a customer will get a bill for internet fee, fee for internet space, etc.

2.3.6 Multilevel Marketing Plans

The Multilevel Marketing Plans is the fraud by using the advertisement about the marketing plan or direct sale. They will advise customers to register to be their members on the website by

informing the benefit when the customer are their members. For instance, a member will have a priority price of their product and if the member can bring anyone to register with them, the member will get profit too. In fact, the member will not get any profit and lose the money.

2.3.7 Work at Home

They invite a customer to be their member by advertising their business as a new generation of business that has the fastest growth. The customer just has a computer and stays at home. The customer will lose the member fees.

2.3.8 Domain Name Registration Scams

They inform a customer that he gets the priority to have the domain name but he must pay any fee for reserving his rights and then he will not get any rights to use that domain name.

2.3.9 Miracle Products

The miracle product is the advertisement of the miracle medicine that has a potential more than itself and the purchase through the internet. For instance, AIDS (HIV), cancer, blood pressure, etc. The information on website informs the certificate or is approved by any organization. The buyer will lose money and get the worst medicine or any damages.

When considering the problems mentioned above, the start of the problems is that people believe the information for advertisement of electronic commerce on the internet and are stuck by its entrapment. Moreover, the other factors are the lack of the consumer's knowledge, insufficiency of the laws or regulations for protects the consumers, insufficiency the organization for looking after the consumer and no self-

regulatory. However, when looking at the number of the website in Thailand that perform as the electronic commerce on the internet, although it is a small number when comparing with other countries especially the United States but in the small number is found a lot of problems. Mostly, the people who use the electronic transaction for buying goods or services do not complain or file the website when they get any damage. The main reason is that the amount of the goods or services bought through the internet is not the big amount approximately, 1,000-5,000 baht²⁷. Moreover, they do not know whom they have to complain because in Thailand do not have the government agency, any organization or private sector for looking after this problems.

Consequently, the person who gets any damage did not complain to any government agency, organization or private sector. It affects to the number of case studies that are announced to the public. However, there are some cases having already published. For instance:

- 1) According to <http://www.thairath.com>, on June 1st, 2005 the topic of IT DIGEST published the case study that was someone ordered the wristband by internet and made payment by credit card and then he got the wrong color. So, he claimed the new one from the website but it refused to claim or refund.²⁸

²⁷ National Electronics and Computer Technology Center, Internet User Profile of Thailand 2004 (Se-ed uktion, Bangkok, 2004), p.84

²⁸Junladit Rattanakumpang, (It Digest Online, 56 volume 17298, June 1, 2548), In <http://www.thairath.co.th/dailyweb/dailyweb.php> , Access date June 2, 2005.

- 2) The buyer brought television 50" by using internet auction on eBay.com and got it at price 226,000 baht but when he got the box and open it. He found the dolls only.²⁹
- 3) The young hacker from the United States hacked the information of the credit card from the website that perform as advertisement of electronic commerce on the internet and used that information to make benefits. One of the websites is the www.shoppingthailand.com.³⁰

Thailand has the government agency to look after any consumer that is the Consumer Protection Board, but they have duty to concentrate only on the advertisement, labels and contracts. It has only part of advertisement that can be applicable to the advertisement of electronic commerce on the internet but they do not have sufficiency power to control the advertisement on the website or do anything. This is the problems about consumer protection on advertisement of electronic commerce on the internet that affect to the confidence of the people on electronic commerce on the internet in Thailand.

²⁹ Yarnnapom Yungyun, "The Cases Study of Computer Crime" Bangkok: The Department of Thai Police, 2544.

³⁰ Hot News, "[Internet Magazine](#), 5th ", Volume 3 (45) March 2543) PP. 25-26.

Chapter 3

The Comparative study about the consumer protection of the electronic commerce on the internet

3.1 The scope of Thai consumer protection law about the electronic commerce on the internet.

As mentioned in this research paper, the types of business transactions are usually separated into three categories: business-to-business transactions, business-to-consumer transactions and consumer-to-consumer which in this research paper concentrated with transactions business to consumer and consumer to consumer. Consequently, the consumer is the party who must be protected by law, organization, self-regulatory etc. It raised serious questions for consumers who do business through the electronic commerce on the internet “*Whose laws apply for advertisement on the internet?*” The answer is that Thailand does not have the specific law to apply for the consumer about advertisement of electronic commerce on the internet through the internet but we have the general of consumer protection law, “Consumer Protection Act B.E.2541” for adopt to protect the consumers. When we look at the purpose of Consumer Protection Act B.E. 2541, the main protection for general consumer protection can be divided in five points:

- 3.1.1 The right to receive the real information about goods and services.
- 3.1.2 The right to choose goods and services.
- 3.1.3 The right to receive the safety about the standard of goods and services.
- 3.1.4 The right to receive the moral of contract.
- 3.1.5 The right to receive the compensation.

The Consumer Protection Act is applied to all kinds of commercial advertisement, as described in Section 3.³¹ However, if the subject of the advertisement is related to restricted goods or services under other legislations, the provisions under the Consumer Protection Act will be applied to the advertisement to the extent that it is not repetition or in contradiction to such other legislation, Section 21.³²

According to the Section 22 of the Consumer Protection Act, advertisements must be contained any statement taking unjust advantage of the consumer, or any statement which may cause harmful effect to the society as a whole, regardless whether such statement is on the origin, condition, quality, or appearance of the goods or services through the delivery, procuring or application of the goods or service. Unjustly taking advantage of the consumer or causing a harmful effect on the society includes:

- 1) False or exaggerated statements
- 2) Statements which may lead to a material misunderstanding concerning the goods or services, regardless whether it was through application or reference to technical reports, statistics or anything untrue or exaggerated
- 3) Statements which are directly or indirectly in support of a legal or moral offence, or lead to the detriment of the National culture*
- 4) Statements which might create disunity or are detrimental to the unit of the people
- 5) Other statements as prescribed in the Ministerial Regulations.

³¹ In this Act: "advertisement" includes any act by any means causing the public to see and know statements for the purposes of trade." advertising media" means things which are used as advertising media, such as newspapers, printed matters, radio broadcasting, radio television, post and telegraph, telephone or sign boards".

³² In the event, there are provisions governing any matters specifically, those provisions shall be enforced for such matters, the provisions of this Chapter shall apply in so far as they are not in repetition or contradictory to the provisions of such provisions"

However, if such statements are generally known by all that they definitely cannot be true, the statements will not be prohibited under the above mentioned rules. The Ministerial Regulations must be consulted closely, as they are changed or amended from time to time.

Advertising statements related to food products are generally not required to be submitted for consideration or approval by the Committee before dissemination. It is the obligation of the advertiser to ensure that the advertisement complies with the law. If it does not, under Section 24 the Committee is empowered by the Act.

Order that the said advertisement be made together with advice concerning methods of use or a warning of the danger according to the conditions prescribed by the Committee. The Committee may also lay down conditions for such advertisement differently for the advertisement through different media, including to, by virtue of Section 27:

- 1) amend the statement or the methods of advertisement
- 2) prohibit the use of certain statement appearing in the advertisement
- 3) prohibit the advertisement or such methods of advertisement; or
- 4) Advertise in order to correct any misunderstanding of the consumer which might have occurred, according to the principles and procedures prescribed by the Committee.

However, the advertisement of electronic commerce on the internet is difference from the general advertisement. For instance: newspaper, magazine, etc. If the Consumer Protection Act is interpreted, the definition of the advertisement is very broad. So, it should cover the advertisement of electronic commerce on the internet also. Nevertheless, the Committee on Advertisement can only examine the information. Does it conflict with the rules of committee on advertisement? If it does conflict to the rules or any law, the committee on advertisement can do only warning or request for

cooperation of the owner of website. The Committee does not have any power to stop advertising that information, to issue any injunction or anything. It is insufficiency.

Furthermore, the advertisement of the electronic commerce on the internet is the transaction that everybody can visit any website around the world. Therefore, if the information on advertisement conflicts to the rule or any law, the Committee on Advertisement can do a little thing because their power is difficult to control foreign website. According to the power of the consumer protection Act B.E. 2541, it conducts "The Consumer Protection Board" for looking after the consumers in general area and receiving any complaint. The Consumer Protection Board does not concentrate directly to the consumer protection about advertisement of electronic commerce on the internet. Their power depends on the Consumer Protection Act. Therefore, they are insufficiency of power as the committee on the advertisement.

However, other process except the advertisement of electronic commerce on the internet still has other law related to the advertisement of electronic commerce on the internet. For instance³³; Conflicts of Law, Civil and Commercial Code, Intellectual Property law, Criminal Code, Taxation Law, Banking Act, Securities and Exchange Act, Trade Competition Act, Electronic Transaction Act, Consumer Protection Act, Direct Sale and Direct Marketing Act, Electronic Transactions Act, Electronic Signatures Law

Although, the Consumer Protection Board and Committee on advertisement have insufficient power as to the advertisement of electronic commerce on the internet, Thailand still has other organization for look after the consumers by give the knowledge of the electronic commerce or create the trust mark for people, they are;

- 1) National Information Technology Committee (NITC)

³³ Chvarit Audtasart, Paiboon Amornpinyokrite, Patcharin Chatvachilagun, Atinun Suwannajuta, Cyber Laws Volume 1, Nation Book, October 2545, pp.15-17

National Information Technology Committee (NITC) was established in 1987 to oversee the policy aspect of information technology development and deployment in Thailand. At present, it has 18 subcommittees steering various IT developments, including three that directly affect the electronic commerce on the internet development are as follows; the Electronic Data Interchange (EDI) subcommittee, six IT-law subcommittees and the electronic commerce on the internet Task Force.³⁴

2) The National Electronics and Computer Technology Center (NECTEC)

The National Electronics and Computer Technology Center (NECTEC) was established in 1992 to carry out research and development in the electronics and computer-related areas. NECTEC operates 15 laboratories specializing in various technologies such as microelectronics, telecommunications, networking, software and linguistics. In 1992, NECTEC was assigned by the government to perform the role of NITC secretariat, in addition to its main role of research and development, promotion and implementation.³⁵

3) The Electronic Commerce Resource Center (ECRC)

The Electronic Commerce Resource Center (ECRC) for setting National Trade Strategy which concentrates on legal infrastructure and security on the electronic commerce on the internet. This is a specific organization that researches and develops the electronic commerce on the internet in Thailand. They announced knowledge about the electronic commerce on the internet to people by conduct any seminar, give warning about the fraud and any virus. Unfortunately, ECRC was shut down in 2003. The government would like to have only organization to look after the electronic commerce on the internet but until now Thailand does not have the specific organization to look after it.

³⁴ Koanantakool Thaweesak, *supra* note 15,

³⁵ *Ibid.*

4) The Department of Business Development

The Department of Business Development announced the regulation that assigns to all websites in form of individual and juristic person who conduct electronic commerce on the internet and have residence in Thailand. They must make registration of E-commerce Entrepreneur by being effective since May 18, 2003³⁶.

3.2 The scope of US law about the consumer protection of the electronic commerce on the internet.

The evolution of virtual shopping on the World Wide Web gives rise to new and complex consumer protection issues which the government concentrates about the consumer protection on the electronic commerce on the internet. It enacted specific law and conducted the government agencies to protect and monitor consumer on the electronic commerce as to the internet.

Federal Trade Commission (FTC) is one of the most active government entities to protect and monitor the consumer rights on the internet. The FTC is an independent federal agency established in 1914 pursuant to the Federal Trade Commission Act (the Act) to protect the fairness of the U.S. economy for business as well as consumers on the electronic commerce on the internet.³⁷ The agency has broad power under the Act, and has been given the power to enforce a number of laws. The particular concern is the apparent with which fraudulent schemes are perpetrated over the Internet.

For the past few years, the FTC, with the assistance of industry, consumer groups, and academics, has been considered how best to safeguard consumers. In June 1999, the

³⁶ Coyer story, "The Registration of Advertisement of electronic commerce on the internet website", *E-Commerce Magazine* July 2003, pp. 42-43.

³⁷ [Http://www.ftc.org](http://www.ftc.org). Access Date October 1, 2004.

FTC held a public international workshop to address the ongoing challenges posed by global online commerce. In September 2000, the FTC's Bureau of Consumer Protection released a report (FTC Report) summarizing the key findings of the 1999 Workshop.³⁸ The FTC Report, however, does not purport to define any legal frameworks for E-Commerce. Moreover, it makes various recommendations to be contemplated in reaching a solution to E-Commerce concerns.³⁹

One of the recommendations discussed in the FTC Report includes the development of an international framework for jurisdiction and applicable law. The current jurisdictional framework provides for a country-of-destination approach, which "allows consumers to rely on their own country's core protections."⁴⁰ As discussed above, the FTC recognizes that this approach causes online businesses to comply with hundreds of different consumer protection laws. The FTC also recognizes, however, that adopting a framework that subjects businesses only to the laws and forums of their own country ("country-of-origination" approach) has the potential of seriously undermining consumer protection and in the end consumer confidence in the global electronic marketplace.⁴¹

Another recommendation provided in the FTC Report includes pursuing the development of alternative dispute resolution (ADR). The World Wide Web makes it conceivable to resolve cross-border disputes--particularly those involving small-value transactions--in a forum convenient to both the consumer and seller: cyberspace. Online ADR "can be a practical way to provide consumers with fast, inexpensive, and

³⁸ Press Release, Federal Trade Commission, "FTC Releases Report on Consumer Protection In The Global E-Commerce Marketplace", Sept. 6, 2000, In <http://www.ftc.gov/opa2000/09/globalecommfin.htm> , Access date May 2, 2005.

³⁹ Federal Trade Commission, *supra* note 158, In <http://www.ftc.org> , Access date May 2, 2005.

⁴⁰ *Ibid.*

⁴¹ Alboukrek Karen, *supra* note 11, pp. 444.

effective remedies, and can reduce businesses' exposure to foreign litigation."⁴² Recognizing the benefits of online ADR, the FTC, in conjunction with the U.S. Department of Commerce, held a workshop solely on this topic.⁴³

In addition to creating common core protections, the FTC Report also proposes encouraging additional private sector initiatives. The FTC believes that private sector programs (e.g., rating programs or seal programs) "are important compliments to the current legal system and often provide protections that consumers want but that are not required by law."⁴⁴ The FTC recommends the continuation of these programs because it believes that they are the keys to restore the consumer to be confident.

Moreover, the FTC recommends development of a system for information sharing and cooperation. "Effective enforcement of consumer protection laws in the international online environment depends on extensive and systematic information sharing and coordinated action across borders." The FTC believes the consumer protection is now the international problems which government can solve the problem alone.

Therefore, the scopes of FTC for preventing the consumer protection on advertisement of electronic commerce on the internet can be divided into 3 parts are:

1) The enforcement action

The actions of the FTC are instituted as a result of consumer complaints that can be filed electronically on the FTC's Web site.⁴⁵ Complaints range from

⁴² The Committee on Consumer Policy, "OECD Guidelines for Consumer Protection in the Context of Advertisement of electronic commerce on the internet (the Guidelines)" (Paper presented at the 58th Session of the Committee on Consumer Policy (CCP)), in March 2000 p. 9.

⁴³ Ibid., p. 1

⁴⁴ Ibid., p. 7

⁴⁵ Janine S. Hiller and Ronnie Cohen, Internet Law & Policy, (New Jersey: Pearson Education, 2002), p. 204

false advertising claims on the web site, to non delivery or misrepresentation of goods on auction sites, to failure to disclose financial terms. Moreover, consumers also use the FTC's toll-free number (1-877-FTC-HELP), file complaints online, and send letters to Consumer Response Center (CRC): The CRC is now responding to over 15,000 inquiries and complaints a week.⁴⁶

The FTC uses online method to warn consumers of potential dangers. One technique is to "take over" the defendant web site, replace it with the notice of the FTC's enforcement action against the defendant and link to the FTC site containing consumer protection information about such scams. Moreover, they also conduct "surf days" targeting specific types of fraudulent activities and identify site that are most likely violating the law⁴⁷.

Since, May 2001, FTC and 12 partners brought over 60 law enforcement actions then, the FTC obtained judgments ordering more than \$300 million in consumer redress. In the past year, the FTC brought over 200 cases involving fraudulent or deceptive marketing practices related to the Internet.⁴⁸

2) The consumer education

The FTC has concentrated on the major effort to educate consumers about the possibilities of fraud on the advertisement of electronic commerce on the internet. Information pamphlets and notices on the FTC site are intended to alert consumers to the types of fraudulent scheme that are popular on the internet and inform the guideline to consumers about action or advertisement on internet. The examples of the notice to consumers are FTC Consumer

⁴⁶ The United States: Annual Report on Consumer Policy Developments 2001, P.1. In <http://www.Ftc.org>, Access date June 2, 2005

⁴⁷ Ibid.

⁴⁸ Ibid.

Alert! FTC Names Its Dirty Dozen: 12 Scams Most Likely to Arrive Via Bulk E-mail⁴⁹. The E-mail boxes of the internet user are filling with more offers for business opportunities than any other kind of unsolicited commercial e-mail⁵⁰. For instance: chain letters, health and diet scams, free goods. Most of the information is very attractive to the consumers. It is very easy to follow them. The warning page advises the consumers on how to avoid being defrauded and how to be protected by providing a link back to the FTC web site for more information on how to be safe traveler on the advertisement of electronic commerce on the internet.

3) The industry self-regulation

The industry self-regulation is promoted by FTC as an important part of the consumer protection effort. Self-regulation is consistent with the principles articulated in the framework for global electronic commerce on the internet. Industry-wide groups can set standards of performance and service that will increase consumer confidence in the electronic commerce on the internet. The certification is a tool of industry. For instance⁵¹: in order for an internet business to display the Better Business Bureau's (BBB) online seal of reliability.

Other self-regulatory referred to as "*Web trust*" by the American Institute of Certified Public Accountants (AICPA) they instituted a seal program that verified the business and marketing practices of websites located in U.S.A and other countries⁵². Furthermore, the VeriSign services to verify the identity of

⁴⁹ Hiller S. Janine and Cohen Ronnie, *supra* note 45, p. 208

⁵⁰ *Ibid.*, p. 209

⁵¹ *Ibid.*, p. 208

⁵² Alboukrek Karen, *supra* note 11, p. 441.

the website to assure the consumer that information such as a credit card number will be encrypted to avoid disclosure to the unauthorized third parties.

3.3 Comparing the consumer protection about the electronic commerce on the internet between Thailand and U.S.A.

When comparing the consumer protection on the electronic commerce on the internet between Thailand and U.S.A., it is found that there are many differences of the laws and regulations, consumer education, etc. In the United States of America, the U.S. Government, the Government Agency and private sector concentrate on the necessary of the consumer protection law and development of the law following the new transaction on the electronic commerce on the internet which U.S.A. is the leader and has a lot of cases. On the other hand, the electronic commerce on the internet came to Thailand around 5 years ago and has developed slowly. Moreover, Thailand does not sufficiency of the specific law to apply for the case about the advertisement of electronic commerce on the internet, insufficiency government agency, lack of the self-regulatory etc. Consequently, the U.S. consumer protection law about the electronic commerce on the internet is sufficiency and has advantages more than other countries especially in Thailand. It can be compared in four parts:

3.3.1 Enforcement and Organization

- 1) U.S.A. has the specific government authority to monitor any transaction on the electronic commerce on the internet. According to Federal Trade Commission (FTC)
- 2) U.S.A. has prevention for damage to consumers. For instance: Technique “take over”, “surf day” etc.
- 3) U.S.A. has specific consumer protection law about the advertisement of electronic commerce on the internet, according to the Federal Trade Commission Act.

3.3.2 Education & Development

U.S.A. gives the education about the electronic commerce on the internet to the public. For instance, FTC Consumer Alert! FTC Names Its Dirty Dozen: 12 Scams Most Likely to Arrive Via Bulk E-mail.

3.3.3 Self-regulatory

U.S.A. has the self-regulation of any companies on Website. For instance, the Better Business Bureau's (BBB) online seal of reliability, the American Institute of Certified Public Accountants (AICPA) etc.



3.3.4 Others

- 1) Alternative Dispute Resolution (ADR) for any disputes on the electronic commerce on the internet.
- 2) International cooperation: OECD, APEC etc.

Moreover, the United States tries to follow the new technology of the electronic commerce on the internet and any technology of fraudulent.⁵³ For instance, another innovative technique uses by the FTC to educate and inform consumers about safely navigating the Web includes the use of "sting" sites. These sites mimic the characteristics that make a site fraudulent and use metatags embedded in the "sting" sites to make them instantly accessible to consumers who are using major search

⁵³ The Committee on Consumer Policy, *supra* note 22, p. 24.

engines and indexing services as they look for products, services and business opportunities.

These are the parts of the advantages of the consumer protection about the advertisement of electronic commerce on the internet between Thailand and U.S.A. that Thailand should follow or adapt any law and guideline of the U.S. The problems at present and in the future will be solved and increased the quality of the consumer protection on advertisement of electronic commerce on the internet. Thailand will recognize that the electronic commerce on the internet is useful and support on electronic commerce on the internet.



Chapter 4

Analysis of the problems about consumer protection on advertisement of electronic commerce on internet

4.1 The loopholes of the Thai consumer protection law about the electronic commerce on the internet.

At present, not only transaction on the electronic commerce on the internet has been developed day by day and the fraud or any activities on the electronic commerce on the internet have developed as well. Law and regulation should follow the technology for consumer protection. Unfortunately, the consumer protection law about the advertisement of electronic commerce on the internet is the Consumer Protection Act that does not directly protect to consumer about the advertisement of electronic commerce on the internet as mentioned in the Chapter 2. The main focus of the Act is to protect consumers against false or misleading advertisement and labels. But it is not specifically designed to address consumer protection problems in the context of e-commerce. The Act contains the provisions, relating to the false and misleading advertisement that is applicable to the e-commerce transactions. For example, the Consumer Protection Board has the power to publish information of goods or services that are likely to cause damages to consumers (Section 10 (3)).

The Act also prohibits the use of statements that are 'unfair to consumers or likely to have adverse effects on the public'. Such statements include false or distorted statements, statements being likely to cause misunderstanding of the goods or services concerned and other statements prescribed in the Ministerial Regulation (Section 22). Some academicians hold the view that the Act can be interpreted to cover not only false or misleading advertising in e-commerce, but also unsolicited emails (junk mails) that create inconveniences to consumers. Although, the Act can be interpreted to cover the advertisement of the electronic commerce on the internet but the Board or committee does not have sufficiency power to enforce or do any action to website.

Furthermore, there still are other loopholes on the consumer protection about the advertisement of electronic commerce on the internet that can be divided into 3 parts:

4.1.1 Enforcement and Organization

- 1) Thailand does not sufficiency consumer protection law about the advertisement of electronic commerce on the internet.
- 2) Thailand does not have prevention for damage to consumers.
- 3) Thailand does not sufficiency the specific govenment authority to enforce or monitor in any transaction on the advertisement of electronic commerce on the internet.

4.1.2 Education and Development

Thai consumers have the lack of education about the advertisement of electronic commerce on the internet.

4.1.3 Self-regulatory

Thailand does not have self-regulation of any private sectors on the Website.

4.1.4 Others

Thailand does not has the Alternative Dispute Resolution (ADR) for any disputes on the electronic commerce on the internet.

4.2 The weakness and uncertain authority of organization in Thailand

At present, when someone suffers from shopping through internet, it raises a lot unsolvable questions such as “Whose is the organization that can receive my petition? Does it have any power to solve my problem? The answer is no one can help you.

Actually, Thailand has the organization that related to the consumer protection about the advertisement of electronic commerce on the internet. It is the Consumer Protection Board which has the power and duties provided in Section 20 of the Consumer Protection Act 1979 as follows:

- 1) To receive complaints from consumers who suffer difficulties or injuries resulting from business mal-practices
- 2) To follow up and scrutinize actions of business that may infringe on consumers' rights, and arrange for testing or verifying any goods or services it considers necessary to protect the consumers
- 3) To encourage or undertake study and research on problems concerning consumer protection with other academic institutions and agencies
- 4) To diffuse technical information and provide educational information to consumers in order to instill consumption habits that promotes health and maximizes the utilization of natural resources
- 5) To cooperate with government offices or state agencies that has jurisdiction and duty to regulate, promote or prescribe standards of goods and services
- 6) To perform any action entrusted by the Board or the ad hoc committees.

These are the duties and power of the Consumer Protection Board which is the government agency having duties to protect people but their power cannot solve any problems about the advertisement of electronic commerce on the internet. Moreover, it still has other organization related to the advertisement of electronic commerce on the internet. For instance, The National Information Technology Committee (NITC), National Electronics and Computer Technology Center (NECTEC), Electronic Commerce Resource Center (ECRC), The Ministry of Commerce, The Department of Business Development etc. Most of these organizations are the government agencies that related to E-commerce but they do not sufficiency power to look after in E-commerce. Last year there has developed about the system of the government agency by combine all government agency to be the only one government agency which

looks after the electronic commerce on the internet.⁵⁴ However, it has been running the process. Therefore, it effects to the people because there is no the exactly agency come to be representative of the government to solve the problems.

4.3 The confidential of consumers

The Confidential of the consumer about the electronic commerce on the internet is the important factor for consumer's decision to use the electronic commerce on the internet. According to the research about the internet user in Thailand in 2545 in the topic "what is the reason that you do not use the electronic commerce on the internet?" The most answer is that they cannot touch the goods approximately 50.7%. The second is that they do not trust the buyer approximately 50.6% (Web site) and the last is that they do not want to give the information of credit card through the internet approximately 34.3%.⁵⁵ When look at the reasons above can be interpreted is they do not have a confidence on the advertisement of electronic commerce on the internet.

The factors deducting the confidential of consumer include in every process of the electronic commerce on the internet on the internet. For instance, consumers do not have confidence the wording in the advertisement on web site because of lack of the organization to monitor wording in the advertisement, insufficiency of the specific law and enforcement to solve the problems occurred. However, the Government has recognized the confidential of the consumers by The Department of Business Development under the Ministry of Commerce by registration of E-commerce

⁵⁴ The Officer of the Department of Business Development: advertisement of electronic commerce on the internet, March 8, 2005

⁵⁵ National Electronics and Computer Technology Center, Internet User Profile of Thailand 2004 (SE-ED education, Bangkok, 2004), p.90

Entrepreneur being effective since May 18, 2003⁵⁶ and the Certified Symbol as a Credit for E-Commerce Operation 2002 (Trust mark)⁵⁷.



However, at present only 5 websites in Thailand that had Trust mark from the Department of Business Development. For instance, www.Anet.net.th, www.jobpub.com, www.thaicbooking.com, www.thai.com, www.siamfflorist.com.

Furthermore, in APEC-T Meeting on the topic “Toward getting more Consumer Confidence” on April 4, 2005 in Bangkok, the consumer’s confidence on the electronic commerce on the internet in regional level has discussed the problems, give the guidelines and recommendations for consumer’s confidence were given to all members.⁵⁸

Consequently, the confidence of the consumer on the transaction of the electronic commerce on the internet is the important factor. It must give the confidence to the consumer as much as possible.

⁵⁶ Coyer story, *supra* note 36, pp. 42-43

⁵⁷ Articles of Department of Business Development On the Use of Certified Symbol as a Credit for E-Commerce Operation 2002, In [file:///localhost/D:/Department Of Business Development 1.htm](file:///localhost/D:/Department%20Of%20Business%20Development%201.htm)

⁵⁸ Naoshi Shima, “Toward getting more Consumer Confidence”, APEC-T Meeting, Bangkok, April 4,2005.

Chapter 5

Conclusion and Recommendation

1.1 Conclusion

The electronic commerce on the internet is the paperless exchange of business information using electronic data interchange (EDI), e-mail, electronic bulletin boards, fax transmissions and electronic funds transfer. It refers to Internet shopping, online stock and bond transactions, the downloading and selling of “soft merchandise” (software, documents, graphics, music, etc.).⁵⁹ For this reason, the electronic commerce on the internet is a reasonable alternative of the business communication that communicates to customers in any place and any time. It can be divided the characteristic of the advertisement of electronic commerce on the internet from their relationship that is usually referred to as:

- 1) Business to Business (B to B)
- 2) Business to Customers Advertisement of electronic commerce on the internet (B to C)
- 3) Customer to Customer Advertisement of electronic commerce on the internet (C-to-C)

However, the consumer has been buying goods or services through the internet which consumers complained of being unable to touch or closely examine a product and misinformation of products when they are online. Therefore, the virtual shopping on the World Wide Web gives rise to new and complex consumer protection issues. For instance: Internet Auction Fraud, Credit Card Fraud, Miracle Product etc. which the advertisement is a tool that they use to fraud for customers.

⁵⁹ The Definition of E-Commerce: P.1. In [http://www. business.com](http://www.business.com), Access date January 29, 2005

Consequently, the consumer protection on advertisement of electronic commerce on the internet has become the theme of discussions in major international forums especially the Organization for Economic Co-Operation and Development (OECD) had set up the (OECD) Guidelines provide a blueprint for governments as they formulate and implement for consumer protection as to advertisement of electronic commerce on the internet particularly acting in accordance with fair business and advertising. This means business should not make any representation that is likely to be misleading, fraudulent or unfair and should not use unfair contract terms.

Accordingly, a lot nation tries to follow up the OECD's guidelines especially the leader of the advertisement of electronic commerce on the internet is The United States. They had concentrated on the consumer protection on the advertisement of electronic commerce on the internet particularly on the advertisement by Federal Trade Commission (FTC) is the one of the most active government entities to protect and monitor consumer rights on the internet. According to the Federal Trade Commission Act (the Act), FTC has broad power under the Act, and has been given the power to enforce a number of laws. Particularly, the schemes of fraud are perpetrated over the internet and how the best safeguard to consumers. The scopes of FTC for preventing the consumer protection on advertisement of electronic commerce on the internet can be divided into 3 parts are:

- 1) The enforcement action

The FTC's actions are instituted as a result of consumer complaints that can be filed electronically on the FTC's Web site.⁶⁰ Complaints range from false advertising claims on the web site, non delivery or misrepresentation of goods on auction sites and unsuitable disclose financial terms

⁶⁰ Janine S. Hiller and Cohen Ronnie, *Supra* note 45, p. 204

2) The consumer education

The FTC has concentrated on the major effort to educate consumers about the possibilities of fraud on the advertisement of electronic commerce on the internet. The examples of the notice to consumers are FTC Consumer Alert! FTC Names Its Dirty Dozen: 12 Scams Most Likely to Arrive Via Bulk E-mail

3) The industry self-regulation

The industry self-regulation has promoted by FTC as an important part of the consumer protection effort. Self-regulation has consisting with the principles articulated in the framework for global advertisement of electronic commerce on the internet. Industry-wide groups can set standards of performance and service that will increase consumer confidence in the advertisement of electronic commerce on the internet. For instance: in order for an internet business to display the Better Business Bureau's (BBB) online seal of reliability.

On the other hand, a few years ago Thai government had been recognized to the important of the advertisement of electronic commerce on the internet on the internet according to IT 2010: National IT Policy Framework, The National ICT Master Plan (2001-2006) to The 9th National Social and Economic Development Plan (2001-2006). Furthermore, Thai government by Prime Minister Thaksin Shinawatra, and Community Development Department support the development about products champions of each district or One Tambon One Product (OTOP) and specific industrial sectors. For instance: advertisement of electronic commerce on the internet for Fashion (Gems, Jewelry and Clothes, etc.) and E-Tourism etc.

Nevertheless, the advertisement of electronic commerce on the internet on the internet in Thailand do not popular as other countries according to the research of the

advertisement of electronic commerce on the internet Resource Center (ECRC) show the number of website had only 6 percent (187 websites) of 3,120 websites that is the advertisement of electronic commerce on the internet on the internet. The main reason is the consumer's confidence to the advertisement of electronic commerce on the internet. Mostly, the information in the advertisement is not true and makes the damage to the consumers which they would not complain or filed to the websites. It can be explained in three parts:

1) The enforcement action and Organization

Thailand has The Consumer Protection Act to protect the consumers and monitor to the advertisement of electronic commerce on the internet's advertisement on the internet. Furthermore, The Consumer Protection Board has the power to look after the consumers but these are insufficiency for protecting the consumer on the internet.

2) The consumer education

Thailand does not have to give the education about how to play safely through the advertisement of electronic commerce on the internet especially which is the advertisement that you can trust. Moreover, they do not have any warning of the fraud or the new technique to the consumers.

3) The industry self-regulation

Thailand does not have the industry self-regulatory to give the confidence to the consumer on the advertisement of electronic commerce on the internet through the internet.

Consequently, the government and private sector should by concentrate to the problems above by giving more power about the enforcement by law and conduct of

specific organization. Furthermore, they should give the education about the advertisement of electronic commerce on the internet especially the fraud by the advertisement. Finally, Thailand should have the industry self-regulatory to make a confidential to consumers which the consumer's confidence is the important factor for the developing of the electronic commerce on the internet.

5.2 The amendment and enact consumer protection law about the electronic commerce on the internet and conduct a specific organization.

Presently, the advertisement of electronic commerce on the internet has been increased rapidly and has a lot of damage to consumers. As mentioned above, the problems on consumer protection law about the advertisement on electronic commerce on the internet, the problems are the law does not have sufficiency of the power to enforce any website especially the advertisement on websites. Therefore, Thai government should amend and enact a new consumer protection law about advertisement of electronic commerce on the internet and the prevent consumers by giving the power to the government agency. Moreover, Thailand should conduct the specific government agency to monitor the transaction on advertisement of electronic commerce on the internet and mention the strategy of the advertisement of electronic commerce on the internet in Thailand. For instance, in the United States conducts the FTC's toll-free number (1-877-FTC-HELP), files complaints online and sends letters to Consumer Response Center (CRC). Furthermore, it same the technique both "take over" and "surf days" targeting specific types of fraudulent activities and identifying site that are most likely violating the law.

5.3 The self-regulatory

In the part of private sectors they are one of the most important part in the advertisement transaction about the advertisement of electronic commerce on the

internet. Rapidly, evolving technological environment of the internet, industry groups are well positioned to implement new and dynamic solution to problems of consumer protection. As new technologies develop, industry can also develop measures to minimize abuse of those technologies. Industry-wide groups can set standard of performance and service that will increase consumer confidence on the advertisement of electronic commerce on the internet. For example, the private sector should check on the wording of the advertisement on the web site or in the United States has “web trust” by the American Institute of Certified Public Accountants (AICPA) they instituted a seal program that verified the business and marketed practices of websites located in U.S.A and other countries.

5.4 The Government and private sectors should campaign and give the acknowledgement about the electronic commerce on the internet to consumers.

The education of the consumer is a major reason about possibility of damage to consumers on advertisement of electronic commerce on the internet especially consumers in Thailand which most of the internet users are lack of knowledge about the electronic commerce on the internet. Consequently, the government and private sectors should campaign and give the information about the electronic commerce on the internet to consumers. For example, the warning page then advises the consumer on how to avoid being defrauded by similar business opportunities and provide a link back to the government agency web site for more information on how to be safe on traveler on the advertisement of electronic commerce on the internet.

BIBLIOGRAPHY

Books

Somkiet Tangkitwanit, "The Expectation of The Internet User In Thailand 2000-2005" in The National Development Resource of Thailand, 1999.

Somkiet Tangkitwanit, "The Competition of The Electronic Commerce In Thailand: Recommendation and Strategy" in The National Development Resource of Thailand, p. 5, 2000.

Chvarit Audtasart, Paiboon Amornpinyokrite, Patcharin Chatvachilagun and Atinun Suwannajuta. Cyber Laws Volume 1. Nation Book, 2002.

Article in the magazine

Hot Ness, "Internet Magazine 3 (March 2543): 25-26.

Coyer story, The Registration of Electronic Commerce website. E-Commerce Magazine (July 2003), 42-43.

Karen Alboukrek, Adapting To a New World of E-commerce: The Need For Uniform consumer Protection In The International Electronic Market Place. George Washington International Law Review 35 (2003): 429-431.

Thesis

Vudhipong Thow-Wadhana, Electronic Commerce: A Case Study of Abusing Of Credit Card On Internet. Master's Thesis, Chulalongkorn University, 2001.

Prachuab Wongsu. Legal Measures Regarding Consumer Protection On Internet Auction. Master 's Thesis, Ramkhamhaeng University, 2004.

Unpublished Manuscript

Naoshi Shima, Toward getting more Consumer Confidence. (APEC-T Meeting, Bangkok, April 4, 2005).

The Committee on Consumer Policy, OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (the Guidelines) (Paper presented at the 58th Session of the Committee on Consumer Policy (CCP)), in March 2000.

Nippon Poapongsakorn and Somkiat Tangkitvanich, Industrial Restructuring in Thailand: A Critical Assignment .

Somnuk Keretho, Thailand E-commerce Strategies (Power Point presented at the APEC Workshop on e-Business and Supply Chain Management, Bangkok, Thailand), 28-30 August 2002. (U Yarnnapom Yungyun, The Cases Study of Computer Crime. Bangkok: The Department of Thai Police, 2001.

Interview

Thaweesak Koanantakool. Director, National Electronics and Computer Technology Center. Interview, 22 May 1999.

Internet Network

Commerce Net, the Internet Domain Survey, In

<http://www.commerce.net/research/stats/results.html>, access date
May 2, 2005.

Electronic Commerce Resource Center, "The Research of The Electronic
Commerce In Thailand, 2542. In <http://www.ecommerce.or.th>,
Access date May 3, 2005.

The Defining and Measuring E-Commerce: A Status Report, In
<http://www.oecd.org>, Access date May 3, 2005

The Definition of E-Commerce, (BusinessTown.com), In
<http://www.businesstown.com> , Access Date May 4, 2005

Organization for Economic, Co-Operation and Dev. (Executive
Summary, in Gateways, supra notes 3), p 7. In
<http://www.oecd.org> ,Access date May 4, 2005.

Thaweesak Koanantakool, Director National Electronics and Computer
Technology Center, "Electronic commerce development in
Thailand", May 22, 1999, In [file://localhost/C:/Documents and
Settings/ACER/Desktop/research paper/E-Commerce in
Thailand.htm](file://localhost/C:/Documents and Settings/ACER/Desktop/research paper/E-Commerce in Thailand.htm) , Accessed date December 1, 2004.

The Organization for Economic (Recommendation of the OECD Council
Concerning Guidelines for Consumer Protection in the Context of
Electronic Commerce, 1999), In [http://
www.ftc.gov/opa/1999/9912/oecdguide](http://www.ftc.gov/opa/1999/9912/oecdguide) , Access date December
23, 2004.

OECD Guidelines for Consumer Protection in the Context of Electronic

Commerce, In

<http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/DSTI->

[CP\(2000\)7-FINAL](#), Access date May 2, 2005

The FTC signed two agreements with the Australian Competition

And Consumer Commission (“ACCC”), In

<http://www.ftc.gov/opa/200/07/usaccc.htm> , Access date

November 23, 2004

<http://www.bbbonline.org>

<http://www.ecommercegroup.org>

<http://www.nclnet.org/BeEWISBroch.html>

Ten Frauds on the Internet, (Electronic Commerce Resource Center (ECRC), In <http://www.ecommerce.or.th> , Access date December 24, 2004

Junladit Rattanakumpang, (It Digest Online, 56 volume 17298, June 1, 2548), In <http://www.thairath.co.th/dailyweb/dailyweb.php> , Access date June 2, 2005.

Thaweesak Koanantakool, Director National Electronics and Computer Technology Center, “Electronic commerce development in Thailand”, May 22, 1999, In [file:///localhost/C:/Documents and Settings/ACER/Desktop/research paper/E-Commerce in Thailand.htm](file:///localhost/C:/Documents%20and%20Settings/ACER/Desktop/research%20paper/E-Commerce%20in%20Thailand.htm) , Accessed date December 1, 2004

Press Release, Federal Trade Commission, “FTC Releases Report on

Consumer Protection In The Global E-Commerce Marketplace”,

Sept. 6, 2000, In

<http://www.ftc.gov/opa2000/09/globalecommfin.htm> , Access

date May 2, 2005

Federal Trade Commission, supra note 158, In <http://www.ftc.org>

, Access date May 2, 2005

The United States: Annual Report on Consumer Policy Developments

2001, P.2. In <http://www.Ftc.org>, Access date June 2, 2005.

The Officer of the Department of Business Development: electronic
commerce, March 8, 2548 (Interview

Articles of Department of Business Development On the Use of Certified

Symbol as a Credit for E-Commerce Operation 2002, In

<file://localhost/D:/Department Of Business Development 1.htm>

The Definition of E-Commerce: P.1. In <http://www.business.com>,

Access date January 29, 2005.

