



PROTECTION OF CONSUMER IN ELECTRONIC CONTRACT:
CASE STUDY OF DISCLOSURE OF INFORMATION
ON PRODUCTS AND SELLERS

BY
MR. CHATNARONGCHAI SIRIKUL

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

GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY

DECEMBER 2010

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Author : Mr. Chatnarongchai Sirikul


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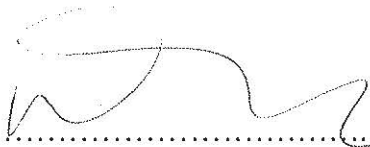
Faculty of Law, Assumption University approves this Independent Study Paper as the partial fulfillment of the requirement for the Degree of Master of Laws.


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ABSTRACT

The objective of this research is to focus on the problem of the Protection of Consumer Order in Electronic Contract in order to gain information on Products and Sellers. Presently, Thailand has insufficiency of the specific law about the protection of consumer in electronic contract. In this regard, we should analysis the problem of Consumer Protection of Thailand and surveying what would be the implication if the foreign Consumer Protection in the context of electronic commerce law is applied in Thailand. In order to find an appropriate pattern of Consumer Protection in the context of electronic commerce contract to improve in the Thai Consumer Protection Law.

From the analysis, it found that Thailand does not have specific law to protect the consumers who engaged in electronic commercial contract. This is the factor that effect to the growth of the number of consumer who use electronic commerce and the development of the electronic commerce in Thailand.

This study presents the purposed recommendation on amendment of Thai Consumer Protection Act B.E. 2522 to protect the consumer in electronic contract. Additionally, to set up a regulation in using a Trustmark will also help to convince consumers before entering into electronic commercial contract.

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Chatnarongchai Sirikul

Table of Content

	Pages
Abstract.....	iii
Acknowledgement.....	iv
Chapter 1 Introduction	1
1.1 Background and General Statement of the Problems	1
1.2 Hypothesis of the Study.....	2
1.3 Objectives of the Study	3
1.4 Study Methodology.....	3
1.5 Scope of the Study.....	3
1.6 Expectation of the Study	4
Chapter 2 History, Concept and Principles of the Consumer Protection Law on Electronic Commerce Contract	
2.1 The History of Electronic Commerce Contract.....	5
2.1.1 The Definition of Electronic Commerce.....	5
2.1.2 The Evolution of Telecommunications Technology Used in the Transaction.....	7
2.2 The Concept of Electronic Commerce Contracts.....	13
2.2.1 The Definition of the Electronic Contract.....	14
2.2.2 Type; Nature and Process of the Electronic Contract.....	14
2.3 The History of Consumer Protection in Electronic Contracts.....	19
2.4 Principle of Laws Concerning Consumer Protection in Electronic Commerce Contracts.....	20
2.4.1 The Consumer Protection Act, B.E. 2522.....	20
2.4.2 The Direct Sales and Direct Marketing Act B.E. 2545.....	21
2.4.3 The Announcement of the Ministry of Commerce on Commercial Operators to be Registered (No. 4, 2003).....	22
2.4.4 The Consumer Protection Act, B.E. 2522 (2 nd revision, B.E. 2541)	24

Pages

Chapter 3 International Law and Laws Comparative Analysis

3.1 The Guidelines for Consumer Protection in the Context of Electronic Commerce (1999).....	25
3.1.1 The Consumer's Right on Information on the Sellers, Products or Services.....	26
3.1.2 The Consumer's Right to Void a Contract.....	29
3.1.3 The Comparative Analysis of the Present Laws on the Electronic Commerce in Thailand.....	29
3.2 New Zealand Law: New Zealand Model Code for Consumer Protection in Electronic Commerce.....	34
3.2.1 The Scope in Using the Law.....	34
3.2.2 Provision of the Information of the Sellers.....	34
3.2.3 The Comparative Analysis of the Electronic Commerce Law that is being Enforced in Thailand.....	35
3.3 The Canadian Law: Canada Code of Practice for Consumer Protection in Electronic Commerce.....	36
3.3.1 The Scope in Using the Law.....	36
3.3.2 Provision of Details on Contracts and other Information.....	36
3.3.3 The Comparative Analysis of the Electronic Commerce Law that is Being Enforced in Thailand at Present.....	37
3.4 U.S.A. Law: the Federal Commission Trade Act.....	38
3.4.1 The Scope of Using the Law.....	38
3.4.2 Provision of Details on Information.....	39
3.4.3 The Comparative Analysis of the Electronic Commerce Law that is Being Enforced in Thailand at Present.....	40

Chapter 4 Analysis of the Problem of Protection of Consumer in Electronic Contract on Disclose of Information on Products

4.1 Insufficient of Provision Regarding a Disclosure of Information in Electronic Contract of Thai Consumer Protection Law.....	41
4.2 The Problem of Disclosure of Information on Consumer Protection Law in Thailand.....	42

Pages

Chapter 5 Conclusion and Recommendations

5.1 Conclusion.....	47
5.2 Recommendations.....	50
5.2.1 The Amendment of Consumer Protection Law.....	50
5.2.2 Regulations in Using a Trustmark.....	53
Bibliography.....	54



Chapter 1

Introduction

1.1 Background and General Statement of the Problems

Electronic commerce is a new form of communication technology development covering various activities including international transaction such as trade in goods and services, transmission of digital information online, electronic funds transfer, securities sold electronically, electronic transmission of lading goods, the procurement, direct sales and after-sales service et cetera. Currently, popularity of electronic commerce contracts is increasing; the survey of commerce in Thailand found that the value of sales via electronic commerce results in year 2007 approximately 427,460 million Baht.¹ This is because of convenience for transmitting conventional paper documents between parties and they can be freely communicated at all 24 hours. Commercial electronic contracts are made through electronic media such as using electronic mail (E-mail) or website (Website) et cetera.

However, contracting by using the electronic equipment has to be based on the contract law. But it seems that the laws are applied to electronic transactions have not developed to trick of communication technology which is progressing rapidly. The problem is the current law applicable to the contractual shall be adopted to protect consumers in the electronic commercial contracts or not, because it is often in the electronic commerce contracts that the contracting parties do not meet each other to talks or negotiations. All transactions can be done through the internet. In fact, the contracting parties may never see or never known each other before; therefore, electronic transactions require very much trust and confidence between the parties.

¹ Bureau of Social Economic and Referendum 3, The National Statistics Office (NSO), "The survey report annual electronic commerce of Thailand in 2007."

There are a lot of questions regarding electronic commerce contracts. Firstly, in the online transaction, the confidence of consumers is low because they doubt seller's credibility as normally consumers do not know who is the seller or where is his location. Secondly, consumers cannot see or touch the products, so what if products are damaged or lost during transport. Next, when a dispute or problem occurred, the consumers fear that they will be treated unfairly regarding a claim for damaged or lost and the law enforcement with online transaction seems to be difficult for them. These problems are the problems related to the protection of consumer of electronic commerce contracts and it also affects the growth of electronic commerce business.

Today consumers are not properly protected in various ways; they cannot reach information about products or vendors. Consumers who purchase goods via the internet cannot claim the seller to be responsible for damages. Before making a decision to purchase something, consumers need to receive adequate information about products and vendors.

The study of issues concerning electronic commerce contracts in the past was focus on the problems associated with the place of electronic commerce contracts have been made. Authors shall focus on problems relating to the protection of consumers of electronic commerce contracts in terms of providing information about the business, information about a products or services, the right to terminate the agreement and suggestions to resolve the problem

1.2 Hypothesis of the Study

Currently, the electronic commerce is being used widely in many countries and it has started to play their role in Thailand. The law of consumer protection about disclosure information on products and sellers under electronic commerce of Thailand is insufficient. Additionally, the official legal authority that has the power to protect the

consumer is not familiar with the new transaction on electronic commerce. Therefore, there should be a study on the enforcement of law for consumer protection in order to provide an appropriate mechanism to resolve problems that have been lurking.

1.3 Objectives of the Study

1. To study the process of electronic commerce contracts
2. To study the law relating to the consumer protection of electronic commerce contracts.
3. To demonstrate the problem and the impact of enforcing the laws of consumer protection relating to electronic commerce contracts.
4. To offer approach in order to resolve the problems related to the protection of consumer of electronic commerce contracts.

1.4 Study Methodology

This Independent Study is based on documentary methodology and it is focused on the provisions of relevant laws including the Consumer Protection Act B.E. 2522, the Electronic Transactions Act B.E. 2544, other law articles, academic books, related journals, including information provided via the internet or website, New Zealand law and Canadian law.

1.5 Scope of the Study

This Independent Study shall focus on the issues related to consumer protection in electronic commerce contracts. Enforcement of relevant laws such as the Consumer

Protection Act B.E. 2522, the Electronic Transactions Act B.E. 2544, New Zealand law and Canadian law is also discussed.

1.6 Expectation of the Study

From this Independent Study the author expects to understanding of the contracts for goods or services through various electronic media in terms of the following.

1. Understanding the process of electronic commerce contracts.
2. Provides information about electronic commerce contracts to consumers in order to decided for making electronic commerce contracts
3. To be informed on the laws relating to consumer protection in the electronic commerce contracts.
4. To be known problem in the present legal obstacles and ways to resolve problems related to the protection of consumer e-commerce contracts

Chapter 2

History, Concept and Principles of the Consumer Protection Law on Electronic Commerce Contract

2.1 The History of Electronic Commerce Contract

At present, electronic commerce has increased its role especially in the trading goods or services business. Communications can be done rapidly, which is different from the past, the author will discuss the history of electronic commerce and also the evolution of communications from the past to the present.

2.1.1 The Definition of Electronic Commerce

From the research study, there is no formally definition of “Electronic commerce” and the Model Law also does not provide definitions of the term “Electronic commerce” in any way

However, in the WTO Work Programmed on electronic commerce has provided the definitions of "Electronic Commerce" as manufacturing, distribution, marketing, sale or delivery of goods and services by electronic means.²

United Nations Conference Trade and Development (UNCTAD) described about the definition of electronic commerce by divided into two types are as 1st the narrow definition means any commercial transactions which are made to order goods or services by using the internet as a communication basis, which the delivery or shipping and payment may be made in the normal way without connection to the Internet.

2nd The broad definition includes either internet or none internet using such as order over the phone or call in interactive and electronic messages. The definition of this term is including the ownership of private electronic network, which is often used in

² WT/L/274 of 30 September 1998.

businesses and with his partners. It is important that buyers and sellers have not met each other during the purchase but they use any electronic communication devices in order to make the purchase agreement instead.³

A commercial transaction can be divided into three main stages: the advertising and searching stage, the ordering and payment stage and the delivery stage, in which any part or all of the procedure may be operated by way of electronics. Therefore it has been covered by the concept of "Electronic Commerce".⁴

The Electronic Transactions Act B.E.2544 did not provide definitions of the term. "Electronic commerce" in any way but it defines the term of "Electronic transaction" in Section 4 means transactions which are made by using the electronic method in whole or in part. This is because of this Act shall apply to electronic transactions, the term "transaction" within the purview of this Act means that any action relating to civil and commercial activities or the operation of the State as prescribed in chapter 4. The term "electronic" means the application of the electron method, electricity, electromagnetic wave or other similar methods and shall include the application of the light, magnetic or equipment associated with an application such as that⁵

From the definition above it can be seen that the electronic transaction is a transaction that involves the use of electronic as the operating mechanism whether in whole or any part, namely transactions do not need the use of electronic method by both party, one party may use the document or paper and the other party may use electronic method, so it will then be considered as the "Electronic transaction".

³ UNCTUD,FAQ, at http://r0.unctad.org/ecommerce/ecommerce_en/faq_en.htm, (last visited 27August 2010).

⁴ World Trade Organization, The work of the OECD on electronic commerce, at http://r0.unctad.org/ecommerce/event_docs/colombo_wto.pdf, (last visited 27 August, 2010).

⁵ Section 4 The Electronic Transactions Act B.E. 2544.

2.1.2 The Evolution of Telecommunications Technology Used in the Transaction.

When the economy grows, many telecommunications system would play an important role in supporting communication in trade. Therefore, in order to cope with the growth of contact between the contracting parties, forms of communication is necessary to develop also. The evolution of electronic technology that have used for communication between parties from the past to the present day would be as follows.⁶

1. Telegraph or Telegram

Telegraph is a mean of sending message over signal through telegraph wire to the receiver by converting the text into the form of the signal and sent to the destination office and the receiver will convert the signals into text that can be understood and then sent to the recipient.

However, even telegraph will allow buyers and sellers to make businesses together more quickly but buyers and sellers will need to send or receive messages from telegraph companies that make buyers and sellers inconvenient. Later, a telex message was a telegram sent by a telex network.

2. Telex

Telex is developed from the telegraph namely, rather than to translate signals from a telegraph message. Telex will send electronic messages from one machine to another by typing text on a paper automatically as soon as after receiving the message. People chose to use telex in the middle 1920s until the time where fax machines and electronic mail has replaced telex.⁷

⁶ Piroonrampa Luangaram, "Impacts of Electronic Commerce on the United Nations Convention on Contracts for the International Sale of Goods," (Master of Law thesis, Faculty of Law, Thammasat University, 2005), pp. 6-10.

⁷ Plain Sailing Communications Limited, History of Telex, at http://www.psworld.co.uk/History_of_Telex.pdf, (last visited 29 August 2010).

3. Fax

Fax invented in 1842 by Alexander Bain. The characteristic is different from Telex because it can be use to send photographs, drawings, maps, and written or printed words by electric signals. Light waves reflected from an image are converted into electric signals, transmitted by wire or radio to a distant receiver, and reconstituted on paper or film into a copy of the original. However, Bain's systems were rudimentary and produced poor quality images. It lacked of synchronization between the transmitting mechanism and the receiving mechanism.

In 1861, the first practical operational electro-mechanical commercially exploited fax machine, the Pan telegraph was an early form of fax machine and it was invented by the Italian physicist Giovanni Caselli. He introduced the first commercial telefax service between Paris and Lyon in 1865, some 11 years before the invention of telephones.⁸

Now a day, modern fax machine became as the sophistication of technology, which operate over a telephone line. Later, newer devices for directly communicate between buyers and sellers such as a telephone accommodate better facility.

4. Telephone

Telephone is a device in the form of electronic transmission of sound. It was invented by Alexander Graham Bell on 7 March 1876.⁹

However, one can see that the phone has been popular with both buyers and sellers from past to present because it is a method of communication that can connect with them immediately and fast. At present there has been developed a mobile or cell phone system, which allows the buyer and the seller to negotiate at any place

⁸ The Wikimedia Foundation, Inc., Fax, at <http://en.wikipedia.org/wiki/Fax#Analogue>, (last visited 29 August 2010).

⁹ Stanford H Rowe. II, Business Telecommunications, 2nd ed. (Singapore: Macmillan Publishing Company, 1991), pp.20-21.

5. Internet Network

The Internet is a global system of interconnected computer networks that use the standard Internet Protocol Suite (TCP/IP) to serve billions of users worldwide. It is a network of networks that consists of millions of private, public, academic, business, and government networks, of local to global scope, that are linked by a broad array of electronic and optical networking technologies. The Internet carries a vast range of information resources and services, such as the inter-linked hypertext documents of the World Wide Web (WWW) and the infrastructure to support electronic mail.

Most traditional communications media including telephone, music, film, and television are being reshaped or redefined by the Internet. Newspaper, book and other print publishing have to adapt to websites and blogging. The Internet has enabled or accelerated new forms of human interactions through instant messaging, Internet forums, and social networking. Online shopping has boomed both for major retail outlets and small artisans and traders. The Internet has no centralized governance in either technological implementation or policies for access and usage; each constituent network sets its own standards. Only the overreaching definitions of the two principal name spaces in the Internet, the Internet Protocol address space and the Domain Name System, are directed by a maintainer organization, the Internet Corporation for Assigned Names and Numbers (ICANN). The technical underpinning and standardization of the core protocols (IPv4 and IPv6) is an activity of the Internet Engineering Task Force (IETF), a non-profit organization of loosely affiliated international participants that anyone may associate with by contributing technical expertise.¹⁰

6. Communication Technologies Applied to Internet Network

Today communication technology plays a major role in the business world therefore; communication technology has been widely adopted in order to remain competitive. For instance, internet network is the technology used as a means for long distance conference or electronic data transfer, the communication technology that applied to internet network as follow;

¹⁰ The Wikimedia Foundation, Inc., Internet, at <http://en.wikipedia.org/wiki/Internet>., (last visited 29 August, 2010).

1) Electronic Mail or E-mail

Electronic mail (e-mail), commonly called email or e-mail, is a method of exchanging digital messages across over the internet or other computer networks. Originally, e-mail was transmitted directly from one user to another computer. This required both computers to be online at the same time. Today's e-mail systems are based on a store-and-forward model. E-mail servers accept, forward, deliver and store messages. Users no longer need be online simultaneously and need only connect briefly, typically to an e-mail server, for as long as it takes to send or receive messages.

An e-mail message consists of two components, the message header, and the message body, which is the email's content. The message header contains control information, including, minimally, an originator's email address and one or more recipient addresses. Usually additional information is added, such as a subject header field.¹¹

2) Electronic Data Interchange (EDI)

Electronic data interchange (EDI) is likely to extend and widely used to organizations both in public and private sectors whether in terms of number of users, quantity and type. Internet network is a network that can communicate around the world without boundaries, then it will make the transmission through internet network is efficient and suitable for use as a channel of EDI transmission. EDI is the structured transmission of data between organizations by electronic means. It is used to transfer electronic documents or business data from one computer system to another computer system.¹²

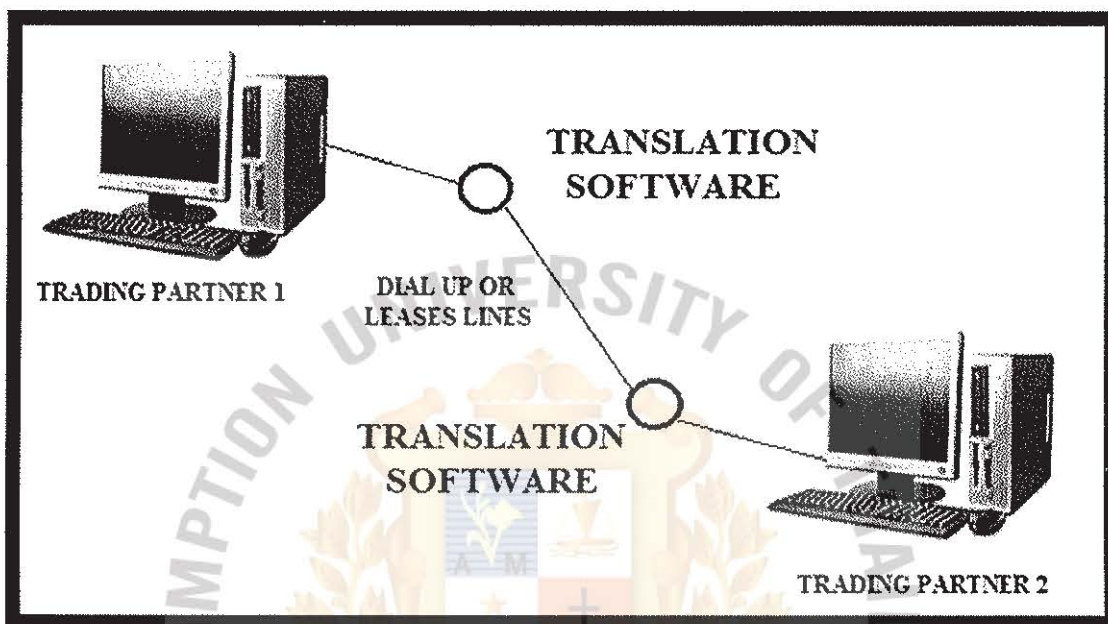
The National Institute of Standards and Technology in a 1996 publication defines electronic data interchange as "the computer-to-computer interchange of strictly formatted messages that represent documents other than monetary instruments. EDI implies a sequence of messages between two parties, either of whom may serve as originator or recipient. The formatted data representing the documents may be transmitted from originator to recipient via telecommunications or physically transported on

¹¹ The Wikimedia Foundation, Inc., Email, at <http://en.wikipedia.org/wiki/Email>, (last visited 29 August 2010).

¹²The Wikimedia Foundation, Inc., Electronic Data Interchange, at http://en.wikipedia.org/wiki/Electronic_Data_Interchange, (last visited 29 August, 2010).

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electronic storage media. It goes on further to say that "In EDI, the usual processing of received messages is by computer only."¹³ Which has processes of EDI between the computers of the sender to the recipient's computer are as follows.



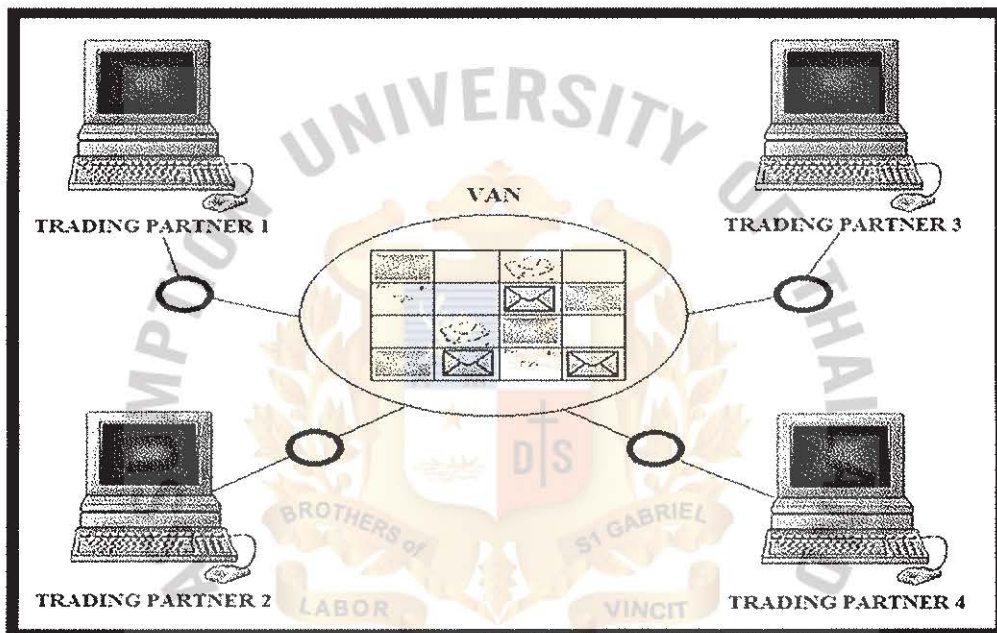
(1) Sending System

The sender must have a program for recording of documents such as invoice, shipment form et cetera. After recorded the details of the documents and verify the accuracy of the information, then the sender will send data from their computer to the EDI service provider. The computer of sender will automatically extract information from the database file into a form of data that is ready to be converted to EDI documents by Translation Software. Communication Protocol, such as VAN Protocol or otherwise) will be responsible to send such data to the computer of the EDI service provider.

¹³ Federal Information Processing Standards Publication, Electronic Data Interchange (EDI), at <http://www.itl.nist.gov/fipspubs/fip161-2.htm>, (last visited 30 August 2010).

(2) EDI Service Provider

A VAN (Value added Network System) is an EDI service provider. After receiving the data sent from the EDI service provider is responsible for checking the right to use the EDI services of the sender such as verifying the sender's password, then it will convert the data from one standard to another standard if the sender and receiver use different EDI standards. Finally, EDI documents received from the sender will be stored in the recipient's Mailbox.



(3) Receiving System

The recipient will contact to obtained documents in their mailbox from the EDI service provider. The Translation Software will convert EDI documents into a form that can be used within the organization of the recipient. Eventually, data will be processed and stored in a database file by recipient's computer.

Advantages of Using EDI Systems

EDI and other similar technologies save company money by providing an alternative to, or replacing information flows that require a great deal of human interaction and materials such as paper documents, meetings, faxes, etc. Even when paper documents are maintained in parallel with EDI exchange, e.g. printed shipping manifests,

electronic exchange and the use of data from that exchange reduces the handling costs of sorting, distributing, organizing, and searching paper documents. EDI and similar technologies allow a company to take advantage of the benefits of storing and manipulating data electronically without the cost of manual entry. Another advantage of EDI is reduced errors, such as shipping and billing errors, because EDI eliminates the need to rekey documents on the destination side. One very important advantage of EDI over paper documents is the speed in which the trading partner receives and incorporates the information into their system thus greatly reducing cycle times. For this reason, EDI can be an important component of just-in-time production systems.¹⁴

3) World Wide Web (WWW) System

World Wide Web (WWW) is a format of presentation of information through the Internet network. It will show the area on a square frame look like Magazine page or a book, which a manner similar to electronic page. By feature, so this is called "Web Page"¹⁵

2.2 The Concept of Electronic Commerce Contracts

Electronic Commerce (e-commerce) is a business which operating through electronic channels covering various types of activities such as trading goods or services. Internet is a computer communications network that can link data between computers around the world. As a result, the Internet is increasingly popular among people and it plays important role to increase numbers of business through electronic media or ecommerce. Presently, the sale of goods or services over the Internet deemed to be a part of electronic commerce

¹⁴ The Wikimedia Foundation, Inc., Internet, Advantages of using EDI over paper systems, at http://en.wikipedia.org/wiki/Electronic_Data_Interchange#Advantages_of_using_EDI_over_paper_systems, (last visited 30 August, 2010).

¹⁵ Vanida Vatcharanukul, "Legal Issues in Electronic Contracting," (Master of Laws thesis, Faculty of Laws, Thammasat University, 2005), p. 11.

2.2.1 The Definition of the Electronic Contract

The Electronic Transactions Act B.E.2544 does not provide a definition of the term "Electronic contract", as well as fails to provide to the term "Electronic commerce" as mentioned above. However, when considering the term of "Electronic transaction" means transactions which are made by using the electronic method in whole or in part. It can be seen that such meaning gives a broad definition to cover all actions or transactions that are used or made through any media or through electronic means. Although, this Act does not define the term of "Electronic contract" but by the meaning of "Electronic transactions", it also includes the electronic contract.

Therefore, the electronic contracts in a general understanding means any contract arising from the use of electronic media in whole or in part as an intermediary for communication of intention to offer and acceptance in order to make a contract. Any information communicated by electronic means is called "Electronic data message". So electronic contract is offering or accept by using electronic data. Whether, it's private contract such as sale contract, license agreement contract, insurance or contracts between the government and the private sector such as administrative contract. Those contracts are arising from the transaction or communication via electronic networks whether contact between telex and telephone, fax, internet network or deal with any device that are similar to electronic means.

2.2.2 Type Nature and Process of the Electronic Contract

Currently, the natures of electronic contracts for sale of goods or services are including contracts between countries and within countries. Especially when the internet is used as an intermediary for forming contracts therefore trading in both internationally or domestically is more convenient and value of electronic contracts is ever increasing. There are types; natures and process of electronic contracts are as follow¹⁶

¹⁶ Vanida Vatcharanukul, Ibid.,pp.18-19.

1. Type of Electronic Commerce Contract

The electronic commerce contract on trade through internet will be divided into three categories.¹⁷

1) Sale Contract of Tangible Goods

The sale Contract of Tangible Goods is a general trading by advertising through the website such as trading in books, mobile phone, computers et cetera. The buyers can shop and pay the price through website rather than go shopping at stores. Although the contract will be made through the internet but in the case of delivery goods or products, the goods may be shipped to the buyer by mailing or any other methods as has been agreed upon.

2) Sale Contract of Intangible Goods

The sale contract of intangible goods or the contracts for the acquisition of digital products such as computer software, music, movies, picture or any data which is stored in electronic form et cetera. This kind of contract is on differ from sale contract of tangible goods namely, the sale contract of intangible goods or the contracts for the digital products will be delivered by methods of data transmission over the internet to the personal computer of the buyer and often problems come with this product such as the copyright and software license agreement.

3) Services Provider Contract

A service is intangible economic goods. They cannot be touched, gripped, handled, looked at, smelled, tasted or heard. Thus, there is neither potential nor need for transport, storage or stocking of services. Furthermore, a service cannot be resold or owned by somebody; it neither can be turned over from the service provider to the service consumer nor returned from the service consumer to the service provider.¹⁸

¹⁷ Michael Chissick and Alistair Kelman, Electronic Commerce: Law and ractice, 2nd ed. (London: Sweet&Maxwell, 2000), pp.62-63.

¹⁸ The Wikimedia Foundation, Inc., Service (economics), at [http://en. Wikipedia .org/wiki/Service_\(economics\)#Service_definition.](http://en. Wikipedia .org/wiki/Service_(economics)#Service_definition.), (last visited 31August, 2010).

Services provider contract is available in various forms such as online banking or financial services as well as advisory services on the internet. There are also other online services that occurred in the communications business by website of the phone network provider such as sending short messages (SMS) via the internet to mobile phone, voice communication over the internet (Voice telephony) or conference over the internet (Voice conference) et cetera.

Since the communication systems through the internet have been developed time to time, it allows frequent formation of contract. Originally, the contract may be formed on paper, communicate over telephone or by sending documents by mail. Nowadays, the internet allows a various forms of communication such as communicate by electronic mail (e-mail), trading through website, voices phone over the internet, video conference which is including text, images and voice or may use other internet services in order to form contracts. However, in this paper shall be made focus on contracting by electronic mail(e-mail) and contracting on website, which are the way to communicate on the internet which causing the most of the problems on legal disputes.

(1) Contracting by Electronic Mail (e-mail)¹⁹

Electronic mail (e-mail) is a form of communication that uses the computer networks, which has status, functions equal and similar to mailings in general but it is faster and more convenient because only the sender has an electronic mail address (e-mail address) of the recipients²⁰, then the electronic mail can be sent to anyone, who have electronic mail address (e-mail address) as well around the world and can be sent to many persons at once also. Because of users can be accessed to a large number of individuals therefore an electronic mail has become a popular format for sending a tender offer and acceptance in order to form a contract and it also used for advertising a product or service, then delivery to the address that provided on the internet. The briefly process of sending and receiving electronic mail data is when the sender presses a commands button to send, and then the data will be sent to a computer of the internet service provider (ISP) of the sender. Information will be forwarded to the computer of internet

¹⁹ Vanida Vatcharanukul, Ibid., p.21.

²⁰ Asian Institute of Technology, E-mail, at <http://www.cs.ait.ac.th/Workshop/internet/e-mail-th.html>, (last visited 31 August, 2010).

service provider (ISP) of the recipients such information will be stored until the recipient browsed or read it.

(2) Contracting on Website²¹

In addition to contracting by electronic mail the contracting parties still form a contract on the web page or World Wide Web (WWW). This is the common way for contracting the sale of goods or services through the Internet. Contracting on website is different from the contracting by electronic mail because it is directly link between users. A computer is only intermediary.

2. The Process of Contracting the Electronic Commerce Contract over the Internet

The processes of trading over the internet need to be associated with relevant persons and coordinated effectively. Persons, who involved in trading over the internet, are as follows²²

1) Stores that sell goods or services by doing on their own websites through the banking system will need to be opened an account and register as a member to the electronic commerce with the bank first.

2) Customers who agree to purchase goods or services on the website can pay for goods or services via credit card or direct debit system.

3) The Bank has served as an intermediary in the payment (Payment Gateway) by review and approval of the cardholder. When ordering products on the internet through a system of banking, the bank will be transferred money for goods or services to the account of the member stores.

4) The internet service provider is responsible for domain name registration or virtual mail set up. Subsequent, the store will leave the home page for selling such products.

²¹ Vanida Vatcharanukul, Ibid., p.21.

²² Nittima Prajuntabut, "Legal Problem on Electronic Commerce Contract," ((Master of Laws thesis, Faculty of Law, Thammasat University, 2008), pp.13-14.

The processes of selling goods or services on the website through the internet are as following.²³

1) Ordering

Although a customer has sufficient information and would like to make a purchase or transactions, sellers must also have an effective system to support. Whether it is a shopping cart system to facilitate the users such as providing details are easy to see that which products had been selected in the shopping cart, total cost of products, taxes or delivery should be demonstrated and customers can also store data of items or products in a certain period of time in order to purchase again later.

2) Payment Systems

Payment is an important step for sellers and shoppers, which should provide a various methods for customer to use as much as possible and also convenient for both vendors and customers, because sometimes customers need to purchase the products but they are not comfortable about the payment, then they may decide not to buy. In considering the payment method, it should consider the target of customer such as who is the customer, customers within the country, teenagers, working or customer in different provinces. There are several convenient ways for payment such as money transfer through banking system, via ATM machine or payment by credit card.

3) Delivery Process

In the case of trading, there are 2 type of products are tangible and intangible products. Therefore, the delivery has two forms: in the case of tangible products can be delivered by services provider and have to provide a variety of way for customers to choose as required upon the agreement such as mailing, express mail service (EMS) by courier and also have a choice of regular or express delivery.

²³ Nittima Prajuntabut, Ibid., pp.14-15.

2.3 The History of Consumer Protection in Electronic Contracts

The consumption of goods and services is necessary. In a recent incident, Trading was done in shops, where buyers and sellers meet each other and check the goods before trading. Later; when the technologies have come and play a greater role and then effected trading. Nowadays, there are new forms of trade in society such as trade on website through the internet network. Initially of trading on the website and purchase through internet is just advertising or offering goods or services through the website. If a buyer wants to purchase goods or services will need to contact each other at the place of seller, where the buyer has the opportunity to check or review products and negotiating with the seller before trading. Subsequently, technologies have been developed to another level; the buyer has the opportunity to make a tender offer to purchase goods or services through website and when the seller has made an acceptance by the technical processing.

As a result, the contract has been made. Therefore, the trading of goods or services through the internet today, buyers and sellers are not required to meet each other. Buyers do not have the opportunity to check or review the goods or services before trading and the buyer must also pay for all products before they received it. Although these methods will facilitate trading but there is a problem in the trust of the buyer to the seller that if buyer has already paid, then he will receive a product or not. In case of dissatisfaction because the buyer does not see the products before trading, then he will be able to use the unilateral right to terminate the contract or not and how can the buyer claim for damages from the seller?, if the buyer does not know the facts about the condition, status or other details of the seller.

From the problems mentioned above, it shows that the Consumer Protection Law applicable does not adequately provide about protection to the electronic contracts and it is necessary to have specific law to protect consumers on an electronic contract through requirement on adequate information about products and sellers. This will be the topic for further study below.

2.4 Principle of Laws Concerning Consumer Protection in Electronic Commerce Contracts

Due to uncertainty in electronic commerce contracts, there must be the laws to protect consumers but current Thai law does not provide specific provisions to protect consumers on electronic contracts. However, the existing applicable laws will be able to protect consumers to some degree. The laws relating to consumer protection in trading on the internet are as follows:

2.4.1 The Consumer Protection Act B.E. 2522

Section 25 states that “In the case where the Committee on Advertisement is of the opinion that, with respect to any goods or service, it is necessary for the consumers to know the facts concerning the status and other details regarding the business man, the Committee on Advertisement shall have the power to prescribe that the advertisement of such goods or service shall also disclose such facts as prescribed by the Committee on Advertisement.”

In this matter the penalties is provides in section 48 states that “Any person who advertises by using a statement under section 22(3) or (4) or statement prescribed in the Ministerial Regulation issued under section 22(6) or violates or fails to comply with section 23, section 24, section 25 or section 26, shall be liable to imprisonment not exceeding three months or fine not exceeding thirty thousand Baht, or to both.”

Provisions under the Consumer Protection Act B.E. 2522, it has protected consumers who trading in general and the sales of goods on internet. The Committee on advertising will consider responsible for any kind of advertising products or services that consumers need to know the facts about the status and other information of the business or seller. However, the Committee on advertisement may be considered one type of products or business may not be necessary to provide information about the business. Namely, the Committee on advertisement has the authority to use discretion in order to determine if a business does not need to provide information about the business. Therefore consumers may not be protected in this matter as they should.

2.4.2 The Direct Sales and Direct Marketing Act B.E. 2545

Section 29 states that “The provisions of the consumer protection law related to consumer protection regarding the advertisement shall apply mutatis mutandis to the provision of information by the direct marketing operator regarding the offering of goods or services. The power and duties of the Consumer Protection Board shall be deemed the power and duties of the Minister, and the power and duties of the Advertisement Committee shall be deemed the power and duties of the Commission”

Section 27 states that “No person shall operate the business of direct marketing unless registered for direct marketing under this Act.”

In term of advertising, the law has adopted the Consumer Protection Act B.E. 2522 to enforce. The Direct Sales and Direct Marketing Act B.E. 2545 has set guidelines for the registration application of direct marketing by any person want to run direct marketing business must submit an application to the registrar under the rules and procedures prescribed by the Commission. The application for registration in the direct marketing business must have at least the following items

1. The name of the direct sales business
2. Domicile of the direct sales business
3. Category or type of goods or services
4. Method or manner of selling product or service

The law requires that the direct marketing businesses have to be registered and in the application for registration must contain a list as required by law to benefit the consumer in order to learn about information of business which may request such information from the responsible authority agencies. However, these guidelines cannot be enforced effectively. Especially in the business that have done through the Internet because there is no Ministerial Regulations as specified in the rules and procedures to submit such application for registration of direct marketing. As a result, the purpose of registration to provide information of business did not achieve enough. It should be declared as specified in the rules and procedures for submitting the direct marketing application urgently in order to enforce the rules effectively.

2.4.3 The Announcement of the Ministry of Commerce on Commercial Operators to be Registered (No. 4, 2003) B.E. 2546

The Announcement issued by virtue of Section 8 of the Commercial Registration Act B.E. 2499 requires that the operators of electronic commerce business must be registered in order to realize the existence of the operators, Location or The kind of business transaction. These will be encouraged to comply with the current economic conditions so those operators can apply the electronic commerce in their business very seriously and achieve more.

According to the Announcement, assigned to individuals, entities are establishments in Thailand, which are running commercial business as follow must be registered to electronic commerce by practice under the Announcement.

1. Trading goods or service by the use of electronic media through the internet network.
2. Internet services provider
3. Web Hosting
4. Services as marketplace for trading goods or services by the use of electronic media via Internet network. (E-Marketplace)

The Announcement provides operators with business feature as mentioned above will be registered in order to realize the existence of the operator and enhances confidence to the next level with shopping on the internet. If those, who have the duty to register violates or fails to perform, is liable to fine not exceeding two thousand baht and if not registered under this Act, which violate continuously must be further fine not exceeding one hundred per day until they has complied with this Act.²⁴

Any person who operates business by using a website to trading goods or services must be registered. The examples types of websites that required to be registered are as follows.²⁵

²⁴ Section 19 The Commercial Registration Act B.E. 2499.

²⁵ The Department of Business Development, Ministry of Commerce, Instructions for registration of electronic commerce, at [http://www.dbd.go.th/mainsite/fileadmin/ contents/ development/files/pdf/annm.pdf](http://www.dbd.go.th/mainsite/fileadmin/contents/development/files/pdf/annm.pdf), (last visited 1 September, 2010).

1. That having system of order such as fills form system, shopping carts system, e-mail or other.

2. That having the payment system offline or online such as money transfer through the accounting system, payments by credit card or e-cash et cetera.

3. That having register system for obtaining information or other services with charge (considered as services provider) such as provides news, articles, books, jobs etcetera.

4. That having main objective for employment advertising products or services of others and get revenue from that advertising.

5. Contractor web design or only advertising that are Contractor web design because of web designing is considered as normal business which is running through the Internet channel.

6. Website offers online games that charge from the players.

7. Website with delivery of products or services through the Internet network such as download a program, software, games, ringtone, screensaver, SMS (Short message) et cetera.

The example types of websites that are not required to be registered.

1. That having only shop for showing their products but trading in the usual way (not through the Internet channel)

2. Public relations in providing information or broadcast any information to members or guests with no charges or fees such as for teaching, jobs announcement.

3. Providing information about the company or product.

4. Personal website, which serves to disseminate private information, educational or personal interests.

5. Website as an intermediary of information for the purpose of exchanging information without any charges or membership fees.

6. Internet service provider (Internet cafe) that provides Internet access. The owner has income from the hour of internet access and playing computer games. In this type of business, the Internet café owners are not required to be registered as engaging in electronic commerce.

However, they must be registered for commercial business (considered as normal commercial in usual way not e-commerce).

For the purpose of tracking the seller or business operator if any problems occur, individual must submitted a copy of personal ID card in order to register. In case of legal entities, the requirement is a copy of identity card of manager of the partnership or attorney director of a limited company or public limited company. However, the registration is intended to bring trust for business operator and then consumers will have confidence in order to making decision for any transactions. After the Department of Business Development get a listed website, then analyzed by type of business and made in the form of database in order to be published through any media for business operators and people who are interested.

2.4.4 The Consumer Protection Act, B.E. 2522 (2nd revision, B.E. 2541)

These are the main principles for the protection of the rights of consumers:

1. The right to be informed of the appropriate and correct description and quality of the goods or services concerned;
2. The right to freely choose or seek the goods or service;
3. The right to a safe use of goods or service;
4. The right to fairness in the conclusion of a contract;
5. The right to be heard by the appropriate competent authorities as well as the right to be compensated in case where there exist damages resulting from a violation of consumer's rights.

This law provides protection to consumers of all cases whether the transaction through any media, but there are no specific provisions to protect consumers who trade on the internet.

Chapter 3

International Law and Laws Comparative Analysis

In Thailand, there is still not any specific law on consumer protection in the context of electronic commerce. Therefore, in the study of present law on consumer protection in the context of electronic commerce, this paper has brought some methods in protecting consumers in electronic commerce contract presented by the Organization for Economic Co-operation and Development (OECD), a well accepted international organization among the developed and free trading economy countries, the New Zealand's and Canadian's specific consumer protection in the context of electronic commerce laws to make a comparative study by also looking at available law in Thailand. This is in order to make possible ways for the reformation of law to become more efficient in protecting consumer in the context of electronic commerce contract.

3.1 The Guidelines for Consumer Protection in the Context of Electronic Commerce (1999)

Organization for Economic Co-operation and Development (OECD) is an international organization that belongs to the developed countries that fully recognizes democracy and free trade economy. OECD is established in 1948, its mission has been to help its member countries to achieve sustainable economic growth and employment and to raise the standard of living in member countries while maintaining financial stability – all those in order to contribute to the development of the world economy.

²⁶As an organization that co-ordinate the European countries on their economies, it has been acting as a center for making general practice formalities for all the member

²⁶ Organization for Economic Co-operation and Development, About OECD, at http://www.oecd.org/document/51/0,2340,en_2649_34267_1824435_1111,00.html, (last visited 5 September 2010).

countries; and that each country would bring these principles to be used as a model in drafting its regulations concerning the protection of consumers particularly on the electronic commerce which the issue is called “The guidelines for consumer protection in the context of electronic commerce (1999)”. It is similar to the other regulations that are used for the protection of consumers on any other cases.

The means of consumer protection in the context of electronic commerce by OECD are divided into

3.1.1 The Consumer’s Right on Information on the Sellers, Products or Services

The means of Consumer Protection in the Context of Electronic Commerce on its practices concern fair business, advertising and marketing; as per OECD Guidelines for Consumer Protection Practices that mentioned: “Upon giving information on a seller, product or service, these information must be correct, exact, clear, understandable and that a consumer may be able to make a recheck of the information easily”.²⁷

“The seller must avoid using some special electronic commerce techniques to conceal the truth about its business location, its characteristics of the business operation or to avoid the practices accordingly to the standards regulations or the mechanism for consumer protection,”²⁸ “Advertising and marketing should also indicate the advertising seller or concerned marketing partners. If it is unavailable or unable to indicate, then, it is counted as a fraud”²⁹. Besides; the OECD has also set up a mean for consumer protection in the electronic commerce that there should be an online disclosure of the information on the business operation of the sellers, products and service as follow:

²⁷ Part two 2, Fair Business, Advertising and Marketing Practices : The OECD Guidelines for Consumer Protection in the Context of Electronic Commerce 1999.

²⁸ Ibid.

²⁹ Ibid.

1. The Information on the Business Operation

The seller should give the details on its business operation clearly, correctly and provide a means that the consumer may recheck its evidences conveniently and easily, such as:³⁰

1) Indicate specific characteristics of the seller's business such as: seller's name, brand name, business location (or of legal entities' domicile), e-mail or other methods of electronic communication or telephone number(s). The information on the business location should be that of legally registered.

2) Means of communication or to contact with the seller by a consumer with convenience, quickness and effectiveness.

3) The most convenient methods of solving of any disputes that may occur.

4) Available law advice services.

5) Location of the business headquarters that complies with the law.

In case a seller has announced its own membership that connects to an organization's regulation; the organization, settlement organization or the organization that supports or guarantees this seller must inform the consumer the details and the methods of checking this seller's membership, including its own regulations and practices.

The details or information of the product(s) and service(s) available: the electronic commerce seller should provide the details available to the consumer, explaining the characteristics of its product(s) and service(s) with correctness and clearness, so that the consumer may use them for making decision on making contact or contract with the company. All necessary information should be provided to the consumer.

³⁰ Ibid.

In setting up regulations to protect the consumers who make their purchase and sale through electronic media in accordance with the consumer protection in the context of electronic commerce, it is rather a matter of setting up of specific regulations for this purpose because trading through the Internet is quite different from the normal channel of trading, that is, the sellers and buyers do not necessarily have to meet face-to-face with each other but to make their trades through electronic communication. And by that a buyer may not know who the particular seller is, therefore, a problem can arise as the product may not be satisfactory or not of the correct type. Each consumer and the seller should be able to easily contact with each other, thus, by giving correct details of product(s) and seller(s) has an important obligation for the particular seller to build confidence to the consumer and that is why the consumer protection in the context of electronic commerce regulations has provided that all sellers have an obligation to give out their data and information on themselves or products or goods with clarity, correctness, easy to understand and with a method or a way to check out their identities. OECD has also set up a measure to be particularly used for the electronic media trading by emphasizing that all sellers must clearly give their own details for the consumers to be able to trace and identify them such as: their names and brand names, businesses' names, original location of their businesses (or of legal entities' domiciles), e-mail addresses or other means of electronic communications such as telephone number(s) also to provide the location of their businesses that comply with the law. They must also indicate their easiest method for the consumers to be able to contact them with conveniences, fast and effective manner and that they can truly be in touch with; not that of false information by the way of fraud. The information required for each seller to provide to the consumers are the information that can be proved or traced of their correctness and identity such as: business license that contain the information of the government section that issued such license, the proper way(s) to prove whether that particular seller has truly received the business license or not et cetera.

The purpose of OECD guidelines for consumer protection in the context of electronic commerce (1999) are to allow buyer to make correct decision in making a decision to contract or not and to provide the information of the methods or sources for checking out their identities and correctness of their businesses.

3.1.2 The Consumer's Right to Void a Contract

In the Consumer Protection in the Context of Electronic Commerce regulations, one of which stated that an electric commerce seller must show the details of its contract to the consumer for acknowledgement. It also stated about the details that should be shown in the contract: names and list of goods or products, prices and service charges that are being charged to the consumer; including the contract on delivery of goods and practices, the conditions of payments and refunds, voiding of contract, returning of goods, the changes in the way of voiding or other policies in returning of goods or refunding.

3.1.3 The Comparative Analysis of the Present Laws on the Electronic Commerce in Thailand

When comparing Thai laws and OECD guidelines, the author found that there are similar law and regulation about giving information to the consumer.

1. The Consumer's Right in Receiving Information about the Sellers, Product (s) or Service(s)

Concerning giving out information on products and sellers according to Thai law for consumer protection on electronic commerce on the Internet, the author found following information.

1) The Consumer Protection Act B.E. 2522

The Thai law has guaranteed on such principle according to the Consumer Protection Act B.E. 2522 section 25³¹ that protects the consumer who buy any product(s) from a general seller and through the Internet. It is appointed as an obligation of the Committee on Advertisement who would determine whether what kind of products or goods that are being advertised must give the fact to the consumers concerning their condition, status and other details concerning each seller.³² The Committee on Advertisement may also consider whether any particular type of products or goods needs or necessary to give out the details on its seller or not on its advertising which may lead to a question whether if there is a consumer protection existence in such decision and therefore, the consumer may not be provided with sufficient protection in some particular cases as they should be. This is different from the means of consumer protection in the context of electronic commerce regulations as mentioned above; in which one of the regulations stated that it is directly an obligation of every seller to give out all information to the consumers. In the Consumer Protection Act B.E. 2522 section 25, it does not mention either that a seller must give out any details or sources of information on its business so that a consumer may check or recheck its identity or the correctness of any information given. Indeed, providing of information about the seller with correctness and clarity concerning making a contract on electronic commerce is one of the most important factors that may help to build the consumer's confidence in decision making, whether or not to buy the products or goods through the Internet. It should be set as an obligation for

³¹ Section 48 The Consumer Protection Act B.E. 2522 (2nd revision, B.E. 2541); Any person who advertises by using a statement under section 22(3) or (4) or statement prescribed in the Ministerial Regulation issued under section 22(5) or violates or fails to comply with section 23, section 24, section 25 or section 26, shall be liable to imprisonment not exceeding three months or fine not exceeding thirty thousand Baht, or to both.

³² Section 3; A seller is including manufacturer or importer of goods sale, or purchaser of goods for re-sale, person who renders services, and includes a person who operates the advertising business.

the seller who owns an electronic commerce business to give out the information with correctness and clarity of its products or goods without prior to the decision making of the Advertising Committee as whether that particular items or services should be detailed accordingly to the regulations or not. It should also provide that every seller should give out its sources of information so that any consumers may be able to check or recheck on the correctness of information.

2) The Direct Sales and Direct Marketing Act B.E. 2545

It provided in section 27 that “No person shall operate the business of direct marketing unless registered for direct marketing under this Act.” Anyone that wishes to make a direct marketing business must apply for permission through the Registrar in accordance with the principle and practice methods as the Committee on advertisement has announced.³³ In applying for the Direct Marketing business there should be at least these details available³⁴; the name of seller, domicile of the seller, types of products or goods and services, the methods of selling or sales.

At present there is still not any announcement made from the Ministry concerning the principle and the method in applying for the direct marketing business which gives an effect to the Registration Purposes on information required for the consumers about the sellers; and that creates the lack of information to the overall consumers on such subject. Therefore; there should be an official announcement made or issued as soon as possible on the principle and method in applying for the Direct Marketing business and to enforce them to be used effectively.

³³ Chapter 4 Section 38 The Direct Sales and Direct Marketing Act B.E. 2545.

³⁴ Chapter 4 Section 39.

3) The Announcement (Issue: 4, 2003) made by the Ministry of Commerce Concerning all the Electronic Commercial Business Seller must be Registered in Accordance with Section 8 of Commercial Registration Act B.E. 2499

It is announced that all Electronic Commerce sellers must also be registered in order for the Ministry to follow up whether: who the seller is, where about the business location is, what is the main type of business? The purpose is to be able to set up the means of development to be in line or conform with the present days' economic condition and for the sellers to be able to bring the electronic commerce to use in more specifically business and more effective manner.

According to the Ministry Of Commerce announcement (Issue: 4, 2003) concerning the commercial business sellers must be registered; it also treats the Internet Trading business as a business that has to be registered. The documents that are required for the registration are: in case of individual or personal business, the personal ID card will be used; in case of legal entities, an ID card belongs to the manager of the company (Limited Company or Public Company) or of an active committee member will be used in order to recognize the real existent of the seller and also to build a level of confidence to the consumer to decide to buy a product through the Internet. All electric commerce sellers have an obligation to register their businesses in accordance with the Announcement (Issue: 4, 2003); by disobeying or violating any of these regulations, the offender will face a penalty by paying a fine of not over 2,000 baht. But once found guilty that the business shall not be registered, a fine of not over a 100 baht per day will be charged until the offender have arranged for the registration and complied with this Act.

From the principles of those 3 issues of law mentioned above, we may see that there are the principles that help to establish the consumers' protection and that the consumers may be able to know or gain the knowledge of the sellers who they are in this electronic commerce business. And it is able to check the information that they have received to see whether they are correct or not.

2. The Consumer's Right to Void a Contract

One of the regulations that is used for consumer protection against the electronic commerce fraud mentioned that all electronic commerce sellers must provide the knowledge of each of their contracts to the consumers, and has also set up the details that must be shown on each contract which consisted of: names; prices of the products or goods and all services covered by the seller, or that to be charged to the customer; the conditions or arrangements for the products or goods deliveries and the agreements or conditions on payments; the agreements or conditions on refunding of products or goods; voiding of contracts; returning of products or goods; changing or voiding of practicing methods or policies in refunding and returning of products or goods. But none of the regulations mentioned about what rights should be given to a consumer in making a void in a contract in this electronic commerce that is quite different to the other general commercials' contracts. For example; when a consumer has already made an agreement in trading but upon receiving the product or goods he or she became unsatisfied with such particular product or goods which is in accordance to the law of Direct Marketing.³⁵ The law only mentioned the right of the consumer in making a void in the contract alone and without any necessity to explanation on the reasons for making such a void in that particular agreement.

³⁵ Section 33 The Direct Sales and Direct Marketing Act B.E. 2545; In purchasing goods or services via direct sales or direct marketing, the consumer is entitled to rescind the contract upon expressing its intention in writing to the direct sales operator or the direct marketing operator within seven days from the day it receives the goods or services. In case of direct sales, the consumer may notify the same to the relevant independent distributor or the direct sales representative.

3.2 New Zealand Law: New Zealand Model Code for Consumer Protection in Electronic Commerce

The objective of the Code is to provide guidance on fair business practices and to encourage businesses and industry associations to adopt the guidelines. It is hoped that it will help ensure that consumers are protected adequately, so that both businesses and consumers can have confidence in on-line transactions.

3.2.1 The Scope in Using the Law³⁶

This New Zealand Model Code for consumer protection in electronic commerce is only used for the businesses that concerned with the consumers who have made contracts in the electronic commerce.

The aim of this law is meant to be a guideline for the business operation to be fair; also with the fairness in advertisement, the fair marketing of the business and of providing the information of the business.³⁷

3.2.2 Provision of the Information of the Sellers

The sellers should allow the consumers to access the necessary details and information about themselves. Such details and information consisted of: names of the sellers; the place where each seller or business is registered; locations of businesses or the addresses/e-mail addresses of the sellers; telephone number(s) or other means of available

³⁶ No.8 Scope of New Zealand Model Code for Consumer Protection in Electronic Commerce B.E....

³⁷ No.10 Objectives of New Zealand Model Code for Consumer Protection in Electronic Commerce I- B.E....

communications with the sellers; the registering of all concerned matters or serial numbers of licenses and; the organizations that the sellers become their memberships.³⁸

3.2.3 The Comparative Analysis of the Electronic Commerce Law that is Being Enforced in Thailand

When comparing the consumer protection in electronic commerce between Thai laws and New Zealand Model Code for Consumer Protection in Electronic Commerce, the author found that there are similar law and regulation about giving information to the consumer.

In giving details about the sellers in accordance to the New Zealand Model Code for consumer protection in electronic commerce found that there are some similar principles that provided in the Thai law; the Direct Sales and Direct Marketing Act B.E. 2545. One of the similar principles that have been set up for the sellers who owned the electronic commerce business and that have to be registered, mentioning that: they'd have to send their applications through the registrar in accordance with the principles and the practices that the committee has announced in applying for the permission for the direct marketing business. The required details needed for the application consisted of: the name of the seller who applied for the permission of direct marketing business, the domicile of the seller, types of products or goods and services offered and, the methods of sales and services.

The Ministry of Commerce's announcement (issue 4, 2003) requested that all commercial sellers must register their businesses in accordance to the Section 8 of Commercial Act B.E. 2499 in order to gain the knowledge of who the sellers are, where they are and what kind of business do they have.

³⁸ Information - Identification of the Business of New Zealand Model Code for Consumer Protection in Electronic Commerce I- B.E....

3.3 The Canadian Law: Canada Code of Practice for Consumer Protection in Electronic Commerce

Canada Code of Practice for Consumer Protection in Electronic Commerce sets up standard practices for good online business operation to offer to the consumers. The Committee consisted of the representatives from many business sectors and this organization was established in the year 1999; the regulations of the Code were issued as an Act that based on 'The Principle of Consumer Protection for Electronic Commerce. A Canada Framework' and the Act was approved for the first time on the 16 January 2004. In order to help consumers become a better-informed and more confident in the marketplace, this Act requires an online merchant to disclose, amongst other things: its business name; telephone and facsimile number; a fair and accurate description of the product being offered; details of any warranties; an itemized price; and the terms and conditions of the purchase. Online merchants must also provide consumers with a right to cancel the purchase before accepting delivery.

3.3.1 The Scope in Using the Law

These issues of law have covered all electronic commerce that included buy, sell, rent, contract or online services offered on the Internet.

3.3.2 Provision of Details on Contracts and other Information

The service providers must give out sufficient information to the consumers including access to the contracts. The language used must be easy and understandable. All information must be true and the sellers must arrange that the consumers have access into their websites easily before deciding to make any contracts; or before any consumers give out their own personal information to the sellers, and that,

the consumers must be able to printout or make a copy of their contracts as well as other information.

1. Provision of details and information on the sellers

Each seller must give out its own information as follow: legal name of the seller or a brand as registered, business address, head quarter's telephone and fax number(s) or of its service providers or representatives.

2. Provision of details and information on the products

All service providers must give details of their products or of the services that being offered to the consumers with correctness and fairness such as the information of products' and services' guarantees, details of contracts, information on trading instruments like warning, terms and conditions, time limitation et cetera.

3.3.3 The Comparative Analysis of the Electronic Commerce Law that is Being Enforced in Thailand at Present

When comparing Thai laws and Canada Code of Practice for Consumer Protection in Electronic Commerce, the author found that there are different law and regulation about giving information to the consumer.

In Giving Out Details on Contracts and other Information

Concerning giving out the details on contracts, sellers, products or services; all these are more clearly and properly indicated in the electronic commerce when compared to the Thai law. All the law issues that connected to this type of commerce were being applied to be used together with the Consumer Protection Act B.E. 2522 and the Direct Sale and Direct Marketing Act B.E. 2545. Even though these laws may have been applied to the mentioned Acts, but there are no significant principles that

are suitable to the electronic commerce contracts as Canada. Other principles apart from those that already existed in the Canadian law on such subject are the ones that being set up as additional to make the particular electronic commerce contracts look more suitable and that the consumers are also well protected by these principles. Therefore, all these principles should be applied or enforced in the Thai law on such commercial subject for the protection of consumers; and to make the Consumer Protection Act to have the same standard as the foreign countries. Apart from this, it will also build up more trusts to the Thai websites that offer the electronic commerce contracts; and it may also attract more foreigners to turn to use some of these services on the Thai websites.

3.4 U.S.A. Law: the Federal Trade Commission Act

Now a day, shopping on internet gives rise to new and complex consumer protection issues the government concentrates about the consumer protection in the electronic commerce on the internet. It enacted specific law and conducted the government agencies to protect and monitor consumer in electronic commerce

3.4.1 The Scope of Using the Law

The Federal Trade Commission Act is used for protecting the fairness of the transaction in the U.S. economy for business as well as consumer on the electronic commerce on the Internet.³⁹ This law empowering power to an independent federal agency called “The Federal Commission trade” (FTC) to enforce the laws which are particular concern with the consumer protection on the electronic commerce on the Internet.

³⁹ The Federal Trade Commission, Consumer Protection, at <http://www.ftc.gov>, (last visited 25 September, 2010).

3.4.2 Provision of Details on Information

The FTC recommends development of system for information sharing and cooperation. Effective enforcement of consumer protection laws in international online environment depends on extensive and systematic information sharing and coordinate action across border. Therefore, FTC is preventing the consumer protection on advertisement of electronic commerce on the Internet can be divided into 3 prongs

1. The Enforcement Action

The actions of the FTC to institute consumer complaints through removal of filed electronic on the FTC's website.⁴⁰ Complaint range from false advertising claims on the website to failure to disclose financial terms.

2. The Consumer Education

The FTC has concentrated on its major effort to educate consumers about the possibilities of fraud on the advertisement of electronic commerce on the Internet. Notices of the FTC site are intended to alert consumer to the type of fraudulent scheme on the Internet and inform the guidelines to consumers about action or advertisement on Internet. The warning page of the FTC's website is to advise the consumer on how to avoid being defrauded and how to be protected by providing a link back to the FTC website for gaining more information on how to be safe traveler on 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

⁴⁰ Janine S. Hiller and Ronnie Cohen, Internet Law & Policy (New Jersey: Pearson Education, 2002), p.204.

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.

3.4.3 The Comparative Analysis of the Electronic Commerce Law that is Being Enforced in Thailand at Present

Concerning giving out information according to laws of the United State of America for consumer protection on the electronic commerce on the Internet, the author found that there are many different of the laws and regulations about consumer education when comparing with Thai law. The U.S. Government, the government agency and private sector concentrate on the necessity of the consumer protection law and development of the law following the new transaction under the electronic commerce on the Internet which the law of U.S.A. has goes so far and there are quite number of cases. On the other hand, in Thailand, the consumer protection in electronic commerce on the Internet law does not have specific law to apply for the cases about the advertisement of electronic commerce on the Internet, insufficient governmental agencies, lack of the self-regulatory.



Chapter 4

Analysis of the Problem of Protection of Consumer in Electronic Contract on Disclosure of Information on Products

Presently, the law used for controlling electronic contract is still unable to solve the problems that occurred increasingly. For example, the problem of a buyer that cannot ascertain the existence of a particular seller, whether it is the same person or the same company that products has been ordered or not, or perhaps it has no capability to provide such particular products or the mentioned services. Therefore, this paper has made a study on these electronic contracts.

4.1 Insufficient of Provision Regarding a Disclosure of Information in Electronic Contract of Thai Consumer Protection Law

In Thailand, there is no specific provision mentions to a disclosure of information in electronic contract. According to The Consumer Protection Act B.E. 2522, it is merely stated in Section 25 that “In the case where the Committee on Advertisement is of the opinion that, with respect to any goods or service, it is necessary for the consumers to know the facts concerning the status and other details regarding the businessman. The Committee on Advertisement shall have the power to prescribe that the advertisement of such goods or service shall disclose such facts as prescribed by the Committee on Advertisement.”

In this regard, provisions under the Consumer Protection Act B.E. 2522 have protected consumers who transact in general manner and under the sales of goods on internet. Generally, The Committee on Advertisement will consider a responsibility of businessman for any kind of advertisement of products or services that consumers need to know the facts about the status and other information of the business or seller. However,

the Committee on Advertisement may require certain type of products to provide its information. Namely, the Committee on Advertisement is entitled to use its sole discretion to determine whether or not a business is required to provide information about its business. Therefore, consumers might not be properly protected in this matter.

In giving sellers' details or information in electronic commerce contracts, the information should include: name of the sellers; location of the seller's business, telephone number(s) and e-mail address. These details will be useful for the consumers in making decision whether or not to make contracts. Therefore, these details and information should be kept up to date regularly, if not, when a problem arises in the contract, the consumer may not be able to contact with the particular seller to solve the problem in time.

4.2 The Problem of Disclosure of Information on Consumer Protection Law in Thailand

The problems of disclosure of information have been occurred as follow:

In Thailand, The registration of seller who operating electronic commercial business is the requirement for the consumer protection, it enables consumers to know the backgrounds of each seller that they are in contact with. By making contract on the electronic commerce, both parties are not necessary to meet each other. A consumer may feel unsafe on making contract, for example, in case that there has been an order made through the Internet but the person who made the order never received the product, the problem arises as it is difficult for buyers to claim or complain as they do not know who is the real seller and buyers had only the information given in the website.

Therefore, by having a section that responsible for the registration of all sellers would be most appropriated in keeping the information of these sellers to be able to solve

problems that may occur. This paper has study the laws concerning the registration of sellers as follow;

1. The Electronic Transactions Act B.E.2544

Section 32 states that “Persons shall have the right to operate service business relating to electronic transaction. In the event where it is necessary to maintain financial and commercial stability, or for benefit of strengthening the credibility and acceptance of electronic transactions system, or to prevent damage to the public, a Royal Decree prescribing the service business relating to electronic transaction which shall be subject to prior notification, registration or license shall be issued”.

2. The Direct Sales and Direct Marketing Act B.E 2545

Section 27 provided that, “No parson shall operate the business of direct marketing unless registered for direct marketing under this Act”.

Any individual who intends to run a direct marketing business must apply for the license to the registrar according to the regulations and procedures that the Announcement of the Committee required.⁴¹

The details required in the requisition form requesting for running a direct marketing business that the Announcement Committee required would consist of:

- 1) The name of the direct marketing seller
- 2) Domicile of the direct marketing seller
- 3) Types of products/goods or service offered
- 4) Procedures in trading of goods/products or services

⁴¹ Section 38. The Direct Sales and Direct Marketing Act B.E. 2545.

3. The Ministry of Commerce's Announcement on the Commercial Sellers that must be Registered (Issue 4, 2003)

In accordance with the Section 8 of the Commercial Registration Act B.E. 2499, it requires that all the electronic commerce sellers to be registered in order to make obtainable information of each seller on the existence of seller, the seller's identity, location, type of business et cetera. The information is to be used in determining the methods to the development of the sellers and to make their business more specific and successful.

The 3rd clause of this announcement required that all the sellers in all areas of the Kingdom who make commercial as their regular occupation must be registered and obtained commercial license, those businesses include:

- 1) Trading goods or services by means of electronic media through Internet system.
- 2) Internet service
- 3) Rental of space in the Network
- 4) Provide a service as an intermediary in trading and services by using electronic media as a main Network.

It is requested that all the sellers who doing their trades or providing services by means of using electronic media through Internet websites that operate as middle-markets or intermediary for trading, they are in the scope that their business must be registered. The documents to be used for registering or applying for a license is a copy of personal ID card; but if it is a legal entities, an ID card belongs to the manager of the company (Limited Company or Public Company) or of an active committee member shall be used in order to confirm of the company's existence and to build a level of trust to the consumer for trading through the Internet. Business operators who fall into this category and fail to provide their businesses registered according to this Act shall be punished for a

fine 2000 Baht and a daily fine of 100 Baht until the business becomes registered in accordance with to the Act.

The objectives of this Ministry of Commerce's announcement are to obtain and collect details and information of all electronic commerce sellers to build confidence to the consumers and also for the benefits of sellers who have registered their businesses. The seller who registered its business with the authority will have a right in using the sign "Registered" issued by the Department of Business Development. Such sign will help consumers in tracing or checking the identities and existence of any particular sellers. But by registering of the business alone is not a guarantee that those particular websites would also have acceptable standards in 'Customer Protection' in all cases such as in giving sufficient data or information to the consumers or not for their decision making to make a trade, in giving complete data or information of some particular sellers, data or information of websites' security, whether or not it is safe to use the services from some websites, whether some sellers have any policy on the protection of consumer.

Since the requirement of standards are specified accordingly to the law as mentioned above, it is clear that these standards are set for the purpose of consumer protection because it is beneficial to the consumers in order to gain knowledge about those electronic commerce sellers. The consumers may also check out the sellers' details and correctness of the information or data that has registered from responsible authority who issued the licenses.

Furthermore, when one considers the on controlling of electronic commerce business one would find that a person who intends to begin a business in electronic commerce must consider thoroughly whether such business falls into any category that must be registered according to the law or not. and what issues of law that it is under and if it concerns with more than one issue, then it must be registered with a few separate licenses as each issue has a different aim in the requirement for registration. This would be beneficial for the consumer but it may also cause a few complications for the

seller to register many times with many sections, for example, if the seller opens a website that deals with trading goods or services through the particular website then, he/she will have to register the business with the office of the Consumer Protection in accordance with the Direct Sales and Direct Marketing Act B.E 2545 and will have to be registered with the Department of Business Development in accordance with the Ministry of Commerce's announcement (Issue 4, 2003) due to the opening of a website that provide services on electronic payment(e-payment) and he/she also has to be registered with the Bank of Thailand in accordance with the (Draft) Royal Decree on CA Regulation.



Chapter 5

Conclusion and Recommendations

5.1 Conclusion

Considering upon the laws available at present with regard to the controlling of some electronic commerce contracts, including e-banking, selling of stocks or shares through electronic media, it should be noted that only certain type of businesses are required by laws to be registered with the authority. Therefore; the sellers and businesses whose businesses are not connected with the above services may run their business without the requirement of being registered.

Thus, in order to set up the Consumers Protection standards on the electronic commerce business; these standards must deal with both of the major electronic commerce sellers or of other important businesses; and of the smaller ones including the businesses that sell even less value products. On the other hand, the problem on registration of the electronic commerce business in accordance with the Law, this Law will certainly make the sellers who desire to begin their electronic commerce businesses must thoroughly check on their types of service, whether or not their service has to be registered and under which provision. If more than one category of services found, then the registration must be made accordingly to each category; that means more than one registration must be made under each legislation for each type of service. This is for the benefit of the consumers; however, it may cause complications to the seller who is required to register their services many times according to the types of services. For example: if the seller opens a trading website, the business has to be registered with the Office of Consumer Protection in accordance with the Direct Sales and Direct Marketing Act; and also with the Department of Business Development in accordance to the Ministry of Commerce Announcement (Issue 4, 2003), requiring the electronic commercial sellers to register their businesses.

The regulation that require the electronic commercial sellers to register their businesses as Direct Sales and also their websites cover their purpose as to gain the knowledge or data of each seller on their trading of products and Internet services; that is, if there is any problem occurs by the fault of the seller, the buyer can then come in contact with the seller easily in order to claim for the loss or damaged. But in actual practice, there are still many sellers who trade through the websites and providing Internet services but have not been registered accordingly to the law, as this particular law is still not efficient enough. The agency responsible for the registration still lacks of personnel to monitor thoroughly on the websites whether they are correctly registered or not. Moreover, the penalty for the violation of this registration law is remained softly; these may lead to the problem that the sellers who provide the trading services on the websites may cheat the consumers easily by receiving money paid by consumers but no intention to send the products to the consumers. Thereafter, these sellers often shut down their websites and disappeared without trace and it is very difficult to go after them. By requiring the online-sellers to register with the authority, it should help the customers to approach or track the sellers in order to claim for lost and damaged even take a legal action with the cheating sellers. But as mentioned before, the current law is still inefficient. It can be explained in four parts:

1. The Problem of Enforcement

The rules and regulations for consumer protection under the Consumers Protection Act B.E. 2522 stated that it solely depends on the Committee on Advertisement, who decides on types of advertising or services which required the sellers to disclose the information regarding business' characteristics, status and other details to the consumers. However, the Committee is entitled to decide which products are not necessary to release the information of the sellers on their website; this is why the consumers may not be efficiently protected.

2. Information on Voidance of Contracts

The next legal issue on an electronic commerce contract is that the law has never set up standards on the rights in voidance of a contract after a consumer has entered into the contract. Therefore, the consumers never have an idea on this particular right. The consumer may not know that the electronic commerce business is also counted as a direct sales business that is covered by law and has an issue set up on the rights of contract voidance, and that it differs from other general voidance of contracts. The voidance of a contract on electronic commerce can be done within a specific period of time mentioned in the contract if such consumer does not satisfy with the particular products or goods; even though it may not be the direct fault of the seller(s).

3. Department of Business Development's Regulations on Using the Trustmark in the Electronic Commerce Business B.E. 2544

The regulations are set up in order to be used directly with this electronic commerce business and all standards in the regulations are in line with its characters. Even though the setting up of these Trustmark regulations in the electronic commerce business may not be issued in the level of an Act, but they have nothing to oppose or become obstruction to the secondary legislation either. These regulations are not compulsory for the sellers but as freewill basis if they wanted to obtain the Trustmark. Any sellers who have this Trustmark, then, must obey the rules and follow these regulations strictly.

Nonetheless, these regulations still have some flaws. For example, the buyer enters into electronic commerce contract with the seller who obtained Trustmark, the buyer then transferred money but never receive the product ordered. In such case, the process of claim will be similar to the process uses with the seller who does not have the Trustmark, namely, there is no special mechanism or special penalty used with the

fraudulent seller who obtained Trustmark. So, we can see that the principle of having a Trustmark in an electronic commerce business is only to increase a level of confidence to the consumers but not a remedy for them when they encounter problems.

4. Service Providers who Issue the Digital Certificates

This business is important in building trust and confidence of the contracting parties because it is a confirmation that both parties are really engaged in a trading with each other. Thus, this kind of business should have been controlled by law, namely, the Royal Decree on the Controlling of the Digital Certificate should be implemented.

5.2 Recommendations

Today, under Thai laws consumer are not properly protected, they cannot reach information about products and sellers. In order to solve the problem, the author suggests to amend the consumer protection laws in the context of electronic commerce and divided the type of electronic commerce business into 2 types.

5.2.1 The Amendment of Consumer Protection Law

At present, electronic commerce contracts are still not being used as much as they should be; the main reason is the consumers still do not trust the sellers. Also, they have not received sufficient information on the products or services, therefore, the consumers may not feel secured enough to make an online contract with those sellers. One of the problems is the law does not have sufficiency of the power to enforce any website especially the advertisement on the Internet. Therefore, we should study the concept of consumer protection in the context of electronic commerce law from certain foreign countries and what would be the implication if it is introduced into Thailand. Then, we can find the appropriate pattern of Consumer Protection in the context of

electronic commerce contract to improve the Thai Consumer Protection Law. In this regard, the Consumer Protection Act B.E. 2522 should state that: “it is the duty of a business owner to submit the information about his products/goods and services to the consumers”. On the other hand, for solving problems in obtaining the sellers’ information, there should be a regulation states that a business owner must provide adequate information to the consumers in order that the consumers is able to trace or to check the correctness of the data/information given. Moreover, government authority who is responsible for the registration should also provide information of the seller publicly.

In solving the problem in controlling of such business, there should be a clear indication of the types of electronic commerce businesses which is required to register with the authority. Then, a seller who operating electronic transaction should be required to register his/her business in order to have easy control and clean record.

Besides, there should also be rules or standards for protecting the consumers from the electronic commerce sellers which must be broken into the types according to businesses and services. Considering from Consumer Protection Law in the electronic commerce business, the author found that the proper separation of business types could help in obtaining the information of those sellers who violated the consumers’ rights and to trace them easily. It is recommended that the type of electronic commerce business should be divided into 2 types, namely, the type that must be registered and the type that requires the permission from the authority.

1. The Types of Business that must be Registered

The new regulation should provide that all sellers that are operating an electronic commercial business shall be required to register with the Electronic Transaction Commissions, including the sellers who open websites for trading or offering services, or open web board as a center of trading of goods or services.

In this regard, the details that must be submitted to the Commissions include name of the seller, address of the business head quarter and other possible contact address, telephone number(s) and e-mail address. This is for the purpose of contacting with any particular seller who may have been complained by the consumers on violations of rights.

In addition, if the seller operating electronic commercial business but fails to register his business in accordance with the law, he may be punished for a fine and/or have to close down his website until the business is registered correctly.

2. The Type of Business must have Permission

The new regulation should provide that the business owners who operate electronic commercial business which may affect large groups of people or offer electronic commercial service such as the business that provide the service in issuing the Digital Signature Certificates. These business owners shall be required to apply for permission before running their businesses. Then, the sellers must also submit information such as the sellers' names, their head quarters and available contact addresses, telephone number(s) and e-mail addresses. Furthermore, there must also be sufficient standards set up for the protection of the consumers by giving the necessary details of sellers, products/goods or services offered, the methods or ways of checking the facts and security of the service systems. There must also be some suggestions to the consumers regarding remedy in case any problems shall occur.

Also, in the event that seller operating electronic commercial business affecting large groups of people or offering electronic commercial service without permission from the authority, there shall be a penalty such as a fine or closure of its electronic business until the permission is granted.

5.2.2 Regulations in Using a Trustmark

As mentioned earlier that the Trustmark can be used to increase a credibility of seller, thus, there should be a regulation specifies the qualifications of the business owners in electronic commerce who may apply to use the Trustmark with their business. It is for the benefits of consumers and it can build more trust and confidence before making a contract.

Apart from those aforementioned, the Consumer Protection Act should be revised to include those standards used in foreign countries. This shall build up more trusts to the Thai websites which are operating electronic commercial transaction and it may also attract more foreigners to use some of these services on the Thai websites.



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