

A Comparative Study of Problems in Consumer Protection Laws for Electronic Commerce (E-Commerce) in Thailand and the United States

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■ I. Introduction

Sellers and advertisers use various business strategies to promote their goods and services. Many of business strategies create a great disadvantage to consumers who may not have sufficient knowledge about the quality and price of goods and services.² As such, there are many laws to protect the rights of consumers, which assign the quality and price of goods and services.³ In Thailand, consumer laws protect consumers from sellers and advertisers who infringe consumer rights.⁴ Many consumers however, think that it wastes time and expenses to prosecute sellers and advertisers. Consumer protection laws should impose duties on sellers and advertisers to be fair to consumers.⁵ Moreover, the government should establish a proper organization to protect the rights of consumers.

In order to protect the consumers, the Thai government enacted the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998.⁶ The text of the consumer

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² Pairoj Artraksa, *Consumer Protection Law*, (3d ed., Winyuchon 2000).
³ *Id.*
⁴ *Id.*
⁵ Chaiwatana Wongwattanasant, *Consumer Protection Law* (1st ed., Winyuchon 2000)
⁶ Susom Supanitaya, *Private Organization for Consumer Protection* (1st ed., Winyuchon 2001)

protection laws refers to two types of transactions: sale of “goods” and “services.”⁷ Nowadays, the sale of goods and services have increased due to development in communication from the telegraph, telephone, and fax, to the internet.⁸ The internet began with the connection of multiple and numerous computer networks, which in turn created a new commerce, called “electronic commerce” (e-commerce).⁹ E-commerce changed way of life of consumers. Due to this change, the Thai government enacted the Electronic Transaction Act of 2001.¹⁰ The Electronic Transaction Act was enacted because electronic commerce or trading on the internet have increased exponentially.¹¹ The Thai government had to create a convenient measure to control this new commerce to protect the rights of consumers.

Electronic commerce provides a great deal of benefit in doing business.¹² However, there are many unavoidable problems, such as ineffective laws for consumer protection in electronic transactions. There are not enough specific laws or specific organizations to regulate and protect consumer

rights in electronic transactions. From these problems, this paper explores whether in the future Thailand will have a better solution to protect consumer rights by making reference to U.S. law.

This paper is a comparative study of the problems in consumer protection laws for electronic commerce in Thailand and the United States. Part II gives a background on Thai and U.S. laws relating to consumer protection in electronic commerce. Part III argues that Thailand is facing a lot of legal problems in consumer protection laws for electronic commerce. Part IV argues that Thailand is not ready to face problems in both public and private sectors relating to electronic commerce consumer protection. And in Part V argues that consumers in Thailand lack the knowledge and understanding of Consumer Protection Laws and do not protect their legal rights. Part VI proposes that Thailand adapt U.S. law to improve consumer protection laws in electronic commerce. Finally, part VII is a conclusion.

⁷ Consumer Protection Act Section 4
⁸ Chawalit Attasartra, *Cyber law (3th ed., Winyuchon 2000)*
⁹ *Id.*
¹⁰ *Id.*
¹¹ *Id.*
¹² *Id.*

■ II. Background

A. There are different types of electronic commerce.

Electronic commerce is a form of distance selling, similar to the better-established techniques of telemarketing, catalog sales, and direct mail marketing.¹³ An electronic transaction is a transaction formed by e-messages in which the messages of one or both parties will not be reviewed by an individual as an expected step in forming a contract.¹⁴ Under the Electronic Transaction Act of 2001, an electronic transaction is a transaction in which all or some part is done by electronic method.¹⁵

There are four types of electronic commerce contracts. First, human-to-human contract, a human makes a decision in entering into the contract.¹⁶ The electronic equipment only helps humans send information regarding its decision to form a contract.¹⁷ Second, a human to computer electronic commerce contract, one side of the party is a human and another side is a computer.¹⁸ The electronic equipment

will communicate information and make a decision to form a contract.¹⁹ Third, computer-to-computer agreed in advance contract, the transaction is appointed and operated by a computer program and it is not necessary for humans to review the transaction.²⁰ The transaction can be performed within the limitation of the trading agreement entered into in advance by the parties.²¹ Finally, in a computer-to-computer contract that is not agreed upon in advance, the transaction can be performed without review by humans and without a written agreement in advance between the parties.²²

Electronic commerce can also be divided into four types according to the connector. First, the business to the consumer type or B2C is a direct connection between the business entity and consumers, which could buy and sell at retail.²³ Second, in a business to the business or B2B, the connection is between a business entity and another business entity.²⁴ Third, in a business to government or B2G, the connection is between a

¹³ Margaret Jane Radin, John A. Rothchild & Gregory M. Silverman, *Internet commerce the emerging legal framework* (1st., Foundation Press 2002).

¹⁴ *Black's Law Dictionary* (Bryan A. Garner ed., 7th ed., West 1999).

¹⁵ *Electronic Transaction Act of 2001* § 4

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Radin, *supra* n. 12.

²⁴ *Id.*

business entity and a government division.²⁵ Finally, in a government to government or G2G, the connection is between two governments in different countries or could be the connection between two different government divisions.²⁶

B. Thai Consumer Protection law has limited regulation of electronic commerce.

Ordinarily, Thai consumers do not know that there are many laws relating to consumer protection.²⁷ Sellers and advertisers always take advantage of consumers' lack of knowledge on their rights.²⁸ In Thailand, the government has enacted many laws to protect consumer rights such as (1) the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998, (2) the Criminal Code and Civil and Commercial Code and, (3) the Electronic Transaction Act of 2001.²⁹

At present, sellers and advertisers use market strategies to sell their goods and services.³⁰ Especially, advertisements are used to induce consumers to buy goods and services.³¹ However, sellers and

advertisers always forget to pay attention to consumer benefits and consumer rights.³² The Thai government realized that the right of consumers should be protected, such as the right to be safe from goods that harm consumer health and safety.³³ Consumers should also have the right to get information, give facts, and propose alternatives to consumers and evades the consumers, who may be cheated and deceived by exaggerated advertisements.³⁴

The objectives of the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998 are to give information to consumers.³⁵ Goods must give important details, a harmful household utensil must have a warning label, or in case of a loan the lender must disclose the credit information and notify the borrower about the interests and fines.³⁶ The Consumer Protection Act also aims to protect against direct dangers by prohibiting the sale of dangerous toys and mechanical devices must clearly notify of the standard of safety.³⁷ Further, the Act aims to protect consumers from unfair prices and monopolization.³⁸

²⁵ *Id.*

²⁶ *Id.*

²⁷ *The Office of Consumer Protection Board, The Office of Consumer Protection Board and the consumers (The Prime Minister Office 2000)*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Artraksa, supra n. 1.*

³¹ *Id.*

³² *Id.*

³³ *The Office of Consumer Protection Board, Consumer Protection (The Prime Minister Office 2000)*

³⁴ *Id.*

³⁵ *Consumer protection, http://farmang.csc.ku.ac.th/kmmgnt006_12.doc (accessed Mar. 9, 2008)*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

Finally, the Act aims to protect privacy rights to protect the personal information of consumers, such as credit card numbers.³⁹

The Thai Criminal Code also pro-TECTS consumers from adulterated food, medicine, and other commodities.⁴⁰ The Criminal Code regulates the use of weighing machines and the sale of deceiving goods.⁴¹ Moreover, the Criminal Code regulates electronic card fraud.⁴² The Civil and Commercial Code also regulates consumer protection in many sections, such as the sale and purchase section, which was enacted to protect the rights and benefits of consumers in general.⁴³

Electronic technology is more convenient, faster, and more efficient than regular transactions in the past. However, in Thailand, the Electronic Transactions are very different from ordinary transactions, which were approved by the laws. The Electronic Transaction Act of 2001 and The Electronic Transaction Act of 2008 were enacted to certify electronic information and to promote and improve consumer confidence in electronic transactions.⁴⁴

C. U.S. consumer protection laws also regulate electronic commerce.

The U.S. consumer protection laws have two levels: the federal consumer protection laws and state consumer protection laws. At the federal level, the federal consumer protection laws were regulated by the Federal Trade Commission and the U.S. Department of Justice. At the state level, the Department of Consumer Affairs in many states protect consumer rights.⁴⁵

■ III. Thailand is facing a lot of legal problems in consumer protection laws for electronic commerce

A. The Consumer Protection Board has limited authority.

Thailand is facing problems on the enforcement of consumer protection laws like the Civil and Commercial Code, the Consumer Protection Act, and other laws because the provisions of these laws cannot be applied as consumer protection measures for electronic transactions. Current laws are not in accordance with virtual business

³⁹ *Id.*

⁴⁰ *Artraksa, supra n. 1.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Electronic Transaction Commission, Safety regulation in electronic transaction, http://www.etcommission.go.th/sub_cmt.php?sub_cmt/sub_security.php-2977k-. (Accessed Mar. 19, 2008)*

⁴⁵ *Wikipedia, Consumer Protection, http://en.wikipedia.org/wiki/Consumer_protection (accessed Feb. 29, 2008)*

situations because the Office of Consumer Protection Board has limited authority and non-accordance with electronic commerce.

In section 20 the Consumer Protection Act provides the Consumer Protection Board authority, but does not cover the duties of other organizations and does not fully protect consumers. In other words, consumer protection laws and governmental organizations only protect and enforce against incurred damages with criminal penalties. Considering the scope of authority of the Office of the Consumer Protection Board under the Consumer Protection Act, there are consumer protection provisions concerning electronic transactions.

The Office of the Consumer Protection Board has limited authority over advertisements. The legal authority of the Consumer Protection Board on advertisements is to monitor advertisements, so that they do not include unfair words to consumers or any words damaging society as a whole. Under Section 25 of the Consumer Protection Act, electronic transaction advertisements showing consumer transactions (activities concerning contracts or any proceedings) shall inform consumers

of goods and services. An advertisement is a presentation of goods and services for the consumers' perception and a tool for decision-making of buying such goods and services. For electronic transactions, even a presentation of information of goods and services through media like general advertisement is directly meant to get back orders of such goods and services to the advertiser to limit expenses which the seller invests in marketing and specifies the goal of the presentation in the form of electronic media.⁴⁶ The important thing is the outgoing general information must be so clear that the consumers can ensure their decision to select such goods and services because, for electronic transaction consumers probably make the wrong decision.⁴⁷ Besides, in electronic transactions advertisements, a seller and an advertiser should maintain the images of goods or services by telling the truth without deception.⁴⁸

Therefore, although the existing authority is applied to some electronic transactions, it cannot fully protect consumers. For example, the prohibition against marketing to people by calling or faxing to consumer numbers may not apply to emails.

⁴⁶ Vajit Jemsirimongkol, *How to built reliable e-commerce web*, http://www.arip.co.th/2006/mag_list.php?g3=3&ofsy=2002&ofvlsom=7&id=elreader&gss=3&halfmonth/-0&mag_noi=161&element_id=406334&mag_g=A&fgsas=2 (accessed Mar.1, 2008)

⁴⁷ *Id.*

⁴⁸ *Id.*

This is a disturbance to consumers who are not pleased to receive these emails. The U.S. government issues regulations to strictly control the ethics of marketing people because it is considered a kind of consumer protection. In comparison with Thailand, the authority of the Office of the Consumer Protection Board is limited and is in not accord with the current situation.

The authority of Office of The Consumer Protection Board has limited authority on contract. The Consumer Protection Board on Contracts consist of a group of people who the Office of the Consumer Protection Board legally enacted, composing of not less than seven qualified persons on various fields, but not exceeding thirteen persons under Section 14. The group has two main responsibilities: (1) authority to consider business announcement in selling goods or services, which is business to control contract under Section 35-Bi. And (2) the group has authority according to the assignment of the Office of the Consumer Protection Board. In practice, Consumer Protection Board on Contract is only responsible for considering business announcement for goods sale or services provision as business to control such contract. But,

other authorities assigned by the Office of the Consumer Protection Board are not clear. The Consumer Protection Board on Contract has no authority on the administration and inspection of the Office of the Consumer Protection Board, to which the laws provides it as sole authority of the Consumer Protection Board to exercise authority under Section 10 (6) of the Consumer Protection Act.⁴⁹ However, the Consumer Protection Board is a juristic person with various authorities, not limited to contract only, and leading to broad and updated authority by the Office of the Consumer Protection Board.

The fact that the Consumer Protection Board on Contract can do other actions out of their authority by giving proposals to the Office of Consumer Protection Board to consider and assign such responsibility back to the Consumer Protection Board on Contract on a case-by-case basis. Such processes take time so it is not in accord with the current business situation, where sellers and advertisers apply many business strategies or approaches consumers to convince consumers to buy goods or use their services. Therefore, the authority of the Consumer Protection Board on Contract relating to the sale of goods

⁴⁹ Section 10 (6) of Consumer Protection Act of 1979 states that

or services of general business is too narrow to regulate electronic commerce. Then, sellers and advertisers always use this gap of the law to take advantage of consumers in selling goods and services through the internet.

The U.S. government considers consumer protection as a big issue. In the levels of governmental agencies have departments in charge of consumer protection thoroughly and there are many procedures for consumer protection. The governmental organizations in charge of consumer protection can be divided into two levels as follows: (1) the federal-level and (2) the state level. For the federal-level, the Federal Trade Commission (FTC) is responsible for defining policies throughout the entire country in terms of consumer protection and responsible for receiving consumer complaints and sending the issues to other associated organizations and give useful information and news to consumers.

In a state-level, state laws provide authority to state attorney general for enforcement. In some states, the state attorney general, in co-operation with other organizations in charge of consumer protection, jointly exercise the law for consumer protection. Some states set specific organizations in charge of enforcing consumer

protection law, separately from the state attorney general and providing authority for proceedings by its own without interference from the state attorney general.

B. The Consumer Protection Act of 1979 and the Consumer Protection Act of 1998 are generally restricted for electronic commerce.

The Consumer Protection Act 1979 and the Consumer Protection Act of 1998 were assigned only the right of the consumers to do ordinary contracts. It seems too narrow to apply to electronic transactions. According to the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998, the rights of consumers in terms of contract are rights to get fair contracts execution. There are consumer protection measurements in terms of contract.⁶⁰

Contracts for any business operation or services are regulated by law or custom and must be in writing. The Contract Commission has the authority to regulate business operation on the sale of goods or providing services.⁶¹ Therefore, a sale or purchase contract or a service contract regulated by the Contract Commission all is a sale or purchase contract or service contract under the laws or customs make in writing.⁶² Section 9 of Civil and Commercial

⁶⁰ Pairoj Artraksa, *Consumer protection law, 16-19* (3d ed., Winyuchon 2000).

⁶¹ Pairoj Artraksa, *Consumer protection law, 16-19* (3d ed., Winyuchon 2000).

⁶² *Id.*

Code states that “[f]or any transactions regulated by law to be written, a person who makes the writing is not required to write it by its own but such written contract shall be signed by such person.”⁵³ Paragraph 1, Section 456 of the Civil and Commercial Code states that “[t]he sale or purchase of real estate or ship, sale or purchase of ship loading more than 6 tons, steamboat or motorboat loading more than 5 tons, raft and carrier animals shall be made in a written contract and registered with the authority. Failure to fulfill all requisite conditions, such transaction shall be regarded as void.” The Civil and Commercial Code only regulates contract transactions. According to the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998, the rights of consumers in terms of a contract are only those define the rights to receive a fair contract execution. Compare with electronic transactions, which mean activities concerning a juristic act, contract or any execution, the definition of the Civil and Commercial Code is broader than general contract execution under the Civil and Commercial Code. Therefore, any deals to be applied with electronic transactions shall only apply to contracts.

C. The Unfair Contract Terms Act of 1997 does not sufficiently cover electronic transactions.

There are many gaps in which sellers and advertisers can take advantages of consumers. The purpose of the Unfair Contract Terms Act of 1997 is for remedial inspections in case of dispute and is only made following normal contracts, excluding electronic transactions.⁵⁴ A contract term can be inspected under the Unfair Contract Terms Act, which are only provided in Section 4 to Section 9 containing eight terms in total.⁵⁵ However, the combination of unfair contract terms under the Unfair Contract Terms Act of 1997 does not apply to electronic transactions in terms of contract execution. Considering the characteristics of unfair contract under the Unfair Contract Terms Act of 1997, the contracting party shall be a person characterized under Section 4 of the Act. It does not apply to contracts electronic transaction because the contracting party does not have legal status, affecting the validity of the contract.

⁵³ Section 9 of Civil and Commercial Code

⁵⁴ Susom Supanitaya, Bodbundit “A summary of seminar in the unfair contract law” vol. 49 part 2 (Thai Bar Association 1993)

⁵⁵ *Id.*

The Consumer Protection Act is different from the Unfair Contract Terms Act of 1997.⁶⁶ In terms of contract, the former provides protection to the consumer in case the contracting party buys goods or receives service from a business with or without remuneration.⁶⁷ On the other hand, the latter provides protection to the consumer who enters into a contract with a business with remuneration and such executing of contract shall not be a commercial purpose, thereby excluding the contract party without remuneration.⁶⁸ In terms of contract, consumer protection under the Consumer Protection Act is broader but strictly applies to specific type of contract because the announcement of a controlled business is required. Contract execution is specific in the initial stage. In case of any disputes caused by non-compliance with the requirements of the Contract Commission with another party who buy goods for use in its office or business, the court has no authority to review the fairness of the contract under the Unfair Contract Act.

In terms of differences on the type of contract under the Consumer Protection Act, a contract means an agreement between a consumer and

business entrepreneur to sell or buy goods or to provide or receive service.⁶⁹ For the Unfair Contract terms Act of 1997, a contract terms mean covenants, agreement, consent, announcement, and statement to waive and limit liability.⁷⁰ Based on these definitions, a contract under Consumer Protection Act gives a limited protection to consumers for issues between a consumer and a business only. On the contrary, under the Unfair Contract Act of 1997, protection covers covenants, agreement, consent, announcement, and statement. Thus, the scope of consumer protection under the Unfair Contract Terms Act is broader than the Consumer Protection Act.

The Consumer Protection Act contains a protective approach. The governmental organization enforcing the Consumer Protection Act is the Office of the Consumer Protection Board. It regulates certain contracts by defining contract terms, prohibiting the use of unfair contract terms to consumers, assigning business entrepreneur to submit contracts with correct contract terms and forms under the requirements of the Contract Board to consumers within a reasonable period, and granting business entrepreneur who submit the contract

⁶⁶ *Susom Supanitaya, Thammasat Law Journal Consumer Protection in Doing a Contract in Accordance With the Consumer Protection Act of 1997 vol. 19 (Thammasat University 1997).*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Section 3 of the Consumer Protection Act of 1979*

⁷⁰ *Section 2 of the the Unfair Contract Act of 1997*

form for comments before breaching or non-conforming with the rules of the Contract Board. The Unfair Contract Terms Act was a remedial approach. In case of unfair contract to consumers, the contracting party can bring the case to the court according to the laws of Unfair Contract Terms. However, the Consumer Protection Act, regarding unfair contract terms, is defective in enforcement.

The Contract Board under Unfair Contract Terms Act by its own and the provisions of laws, cannot completely cover the definition of electronic transactions. Commercial transactions by organizations and individuals based on electronic process means connections expressing intention and all types of need on the electronic process. By definition of electronic transactions, the authority of the Board and the provisions of laws do not apply to electronic transactions. Further, electronic transactions does not mean only contractual transactions, but non contractual transactions (electronic transactions) as well where no consumer protection laws.

■ IV. Thailand is not ready to face problems in both the public and private sectors affecting consumer protection of electronic transactions.

The public sector involves consumer protection processes under consumer protection laws and legal bodies such as, the Consumer Protection Board, the authorities, investigation officers, attorneys, and courts of justice. These public organizations and persons are supportive mechanisms for consumer protection laws. However, in reality, consumers seeking help or service from these mechanisms is not easy.

A. There is a lack of enough budget for public organizations.

There are two types of public organizations which lack budget: public organization with a direct duty on consumer protection and public organizations with other duties relating to consumer protection.⁶¹ The former is the Office of the Consumer Protection Board, including its authorities and Field Consumer Protection Board.⁶² The latter are government officers in governmental organizations, appointed by the Minister to be the responsible authorities under the Consumer Protection Act of 1979, for example, government officers of the Department of Administration, Royal Thai Police,

⁶¹ The Office of Consumer Protection Board, *supra* n. 28.

⁶² *Id.*

Sanitary Division, Provincial Public Health, Office of Intellectual Properties, Office of the Attorney General, Department of Provincial Administration, District Administration, Bangkok Metropolitan Administration, and Municipality that have Provincial Consumer Protection Board and apart from Bangkok.⁶³

The public organizations with direct duty on consumer protection are annually allocated limited budgets by the Government.⁶⁴ Such budgets are mostly used for administrative work as common expense.⁶⁵ The provincial consumer protection is allocated small a budget without subsidy to the private sector or general consumers.⁶⁶ The Operation of Consumer Protection Board is limited because no budgets are allocated to support complaining consumers or petitions to the Board for substituting accusations. Besides, the budgets of other associated public organizations like the Department of Administration, Royal Thai Police, Sanitary Division, Provincial Public Health, as the authorities appointed under the Consumer Protection Act of 1979, are not allocated under functional basis. Each organization uses annual own budgets on a regular basis, regarding it as working within the scope of duty of such organization

and is not granted by the Consumer Protection Board subsidy.

In the U.S., there is a responsible organization called the Federal Trade Commission (FTC). Such principles of consumer protection categorize consumer protections into three main groups: (1) consumer protection on fraud, (2) consumer protection on education and electronic transmission and, (3) consumer protection on electronic commerce. A business inspected and certified as meeting the standard of business group will be stamped a red seal at the right side of their website. Therefore, the U.S. seriously protects consumers in electronic transactions. Thailand, however, developed electronic transactions quickly without developing consumer protection laws in accordance with the current situation.

B. No personnel resources in the public sector for enforcing consumer protection laws.

Any complaints by consumers are required to be directly handled by the authorities of Office of the Consumer Protection Board and/or government officers of other associated mechanisms depending on the issue and process, such as, negotiation, inspection, giving notice, investigation, exploration, arrest,

⁶³ *Id.*
⁶⁴ *Id.*
⁶⁵ *Id.*
⁶⁶ *Id.*

offense determination or penalty; and other related factors, such as complex issues, the event of case or place of business operation (distance), number of complaint, and administrative expenses.⁶⁷ Therefore, the number of responsible personnel for associated public organizations cannot be accurately defined.

For example, in case of any offense by business operators in the jurisdiction of the Office of the Consumer Protection Board with authorities' regular presence or a branch of the Office of the Consumer Protection Board, the action for issues can be normally and continually done.⁶⁸ But in case of any cases in the jurisdiction of the Office of the Consumer Protection Board without authorities' regular presence or without branch, the actions for complaints shall be taken by the legal authorities appointed by the Minister like a sheriff, land officers, provincial physicians, provincial public health officers, provincial agriculturist officers, investigators, or officers of the Department of Intellectual Properties.

The action taken by these authorities is not within their direct duty.⁷⁰ Spending much time and expenses can affect their main duty. Any action for consumer protection is a secondary duty to be acted after their main duty, leading to delay of consumer protection actions.⁷¹

The problem of the lack of personnel and resources is found in provisions of laws under Section 8 of the Consumer Protection Act of 1979, which provides empowerment to the Prime Minister to appoint officers or authorities according to the announcement of the Prime Minister's Office on appointment of authorities to comply with laws.⁷² Many authorities are appointed from other government organizations, out of the Office of Consumer Protection.⁷³ This indicates a problem in the lack of personnel. Although appointment of the government officers to act or jointly act is one appropriate solution, it provokes problem of efficiency.⁷⁴ Such government officers have their own main duties. Therefore, the problem of lack of personnel is another critical issue requiring urgent solution.

⁶⁷ *The Office of Consumer Protection Board, supra n. 34.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

The above-mentioned fact indicates that the current public organizations cannot respond to the need of enforcing the consumer protection law. Public organizations in charge of electronic transactions have added on their burden and their effectiveness on their matter is still in question.⁷⁵

C. The private sector has no main role in consumer protection caused by a lack of readiness and budget.

Private organizations take the main role in consumer protection for contracts.⁷⁶ Private associations, foundations, and communities are formed to protect their rights from business exploitation Section 61 of the Constitution of the Kingdom of Thailand B.E.2550 states that “[t]he rights of a person who is a consumer to receive actual information shall be protected and a consumer shall have the right to make a complaint for remedy of damage and to amalgamate with another so as to protect consumer’s rights.” Paragraph 2 provides the existence of independent organizations, including consumer representatives to express their opinion for the enactment of laws and regulations, and define measurements for consumer protection.

In addition, according to the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998, the rights of association are acknowledged for the accusation of civil and criminal cases for the sake of consumer protection provided in Section 40 and 41. Section 40 states that “[a]ny associations have their objectives on consumer protection or countering unfair business competition, with their regulations concerning committee, member and association’s procedures in accordance with terms regulated in Ministerial Regulations, such associations can request the Commission to acknowledge rights and accusation power according to Section 41.”⁷⁷ And section 41 states that “[u]nder Section 40, in terms of any proceedings on violation of consumer’s rights, the associations acknowledged by the Commission are entitled to make accusation on civil or criminal cases or take any actions for consumer protection cases and be empowered to claim for damages instead of association’s member, with written appointment notice for such action.”⁷⁸ Paragraph 2 of Section 41 states that “[i]n terms of proceedings, the

⁷⁵ *Id.*

⁷⁶ *Susom Supanitaya, Private organization for consumer protection (1st ed., Winyuchon 2001)*

⁷⁷ *Id.*

⁷⁸ *Id.*

associations are not allowed for accusation withdrawal without the court's approval because the court considers that such withdrawal shall not bring any damage to consumer protection as a whole for a civil case concerning a claim on behalf of the associations' member, accusation withdrawal, or sentence. In case of the disputants' consensus or compromise, a letter of consent of the appointer for claim on damage shall be presented to the court.⁷⁹

Even though, provisions of law acknowledge the status and role of private organizations, in fact, the role of private organizations including associations or foundations, are facing similar problems which is the lack of capital against operating expenses under the registered objectives of associations because their revenue are derived from admission fee, associations or foundations' members fee, including donations from the public.⁸⁰ Because of the small number of association members, each association lacks the revenue from its members and lacks the budget or insufficient budget to achieve their objectives.⁸¹

Consumer protection is a policy issue for the government or political parties, on how important they view private organizations. Currently, such private organizations are rarely found in Thailand, with a small role for consumer protection. So, consumers mostly take action on their own in case of a business entrepreneur's exploitation because of the lack of support by the government.⁸² On the contrary, in the U.S., there many consumer organizations like the Food Consumer Association, Electrical Appliance Association, Agricultural Products Consumer Association, Automobile Consumer Association, Environmental Association.⁸³ These associations were formed by consumers of each kind of product or service, and supported by the government because these private organizations have an important role to protect consumers.⁸⁴ These organizations monitor business entrepreneurs and publicize information to members or general consumers.⁸⁵

⁷⁹ Susom Supanitaya, *Private organization for consumer protection (1st ed., Winyuchon 2001)*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

■ **V. Consumers do not know and do not understand consumer protection laws and do not protect their legal rights.**

A. Consumers do not realize their legal rights under consumer protection laws.

Under Section 61 of the Constitution of the Kingdom of Thailand B.E. 2550 and Section 4 of the Consumer Protection Act, consumers have rights to get correct and sufficient information and product descriptions about goods or services, rights to get security from consuming goods and services, rights to get fairness of contract execution, and rights to be judged and compensated against damages.⁸⁶ In Thailand, even though many laws are enacted to protect consumer rights, consumers do not pay much attention to such rights because the government lacks information and does not provide the consumers basic knowledge on their rights.⁸⁷ Above all, the government does not cultivate the basic idea of the consumers in terms of their rights.⁸⁸ In addition, although consumers themselves know their rights, they ignore, and pay no attention to receiving

information or product descriptions because they are not aware of product descriptions.⁸⁹

These issues are much different in the U.S. because the U.S. cultivates consumer thinking, to maintain and protect their rights. The U.S. greatly publicizes information and basic knowledge on consumer rights.

B. Most Thai consumers do not pay attention to the quality of goods and services.

Most of Thai consumers are interested in goods and services with low prices, but not focus on quality.⁹⁰ Thailand is a developing country, where most people have low income. So, most consumers prefer goods and services with low prices, with promotional gifts or vouchers, including products with promotions to convince the consumers to buy goods and services.⁹¹ Hardly do most Thai consumers pay attention to the descriptions of the quality of goods and services.⁹² Therefore, seller and the advertiser focus on bringing out marketing strategies of price and promotions, without attention to quality of goods.⁹³ The vendor and the advertiser conceal or do not sufficiently describe the quality of goods, regarded as excessive exploitation of consumers.⁹⁴

⁸⁶ *Wongwattanasant, supra n. 4.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Artraksa, supra n. 1.*

⁹¹ *The Office of Consumer Protection Board, Consumer Protection (The Prime Minister Office 2000)*

⁹² *Id.*

For electronic transactions, sellers and buyers have not known and seen each other before, so most vendors take this opportunity as the channel to exploit consumers with advertisement of goods in the form of overstatement about the quality of goods and products, or selling low quality goods at a higher price than normal.⁹⁵

C. Thai consumers are not interested in legal proceedings against business entrepreneur because they think that it is a waste of time and money.⁹⁶

In Thailand, consumers exploited by business entrepreneurs do not sue because they think that it is not worthwhile.⁹⁷ Legal proceedings from receipt of petition, inquiry of witness, sentence, and legal execution, all require time and a lawyer.⁹⁸ Currently, the Court of Justices of Thailand tries to improve legal proceedings to be easier and faster.⁹⁹ Such improvement, however, is not so effective to provoke consumer feeling that legal proceedings are easy like contacting with general governmental organizations.¹⁰⁰ Besides, currently, judgments on consumer protection issues depend on the district court or civil court. There are many cases to be sentenced at these

courts, so it affects consumer protection cases, which should not take excessive, time and process.¹⁰¹ In terms of legal proceedings, consumers have to hire a lawyer.¹⁰² They have to pay a lot of money for lawyer fee because in Thailand, private organizations do not support or provide assistance to consumers in legal proceedings for consumer protection.¹⁰³

■ VI. Proposal

After studying the problems on consumer protection in terms of electronic transactions, the laws regulating electronic transactions and consumer protection on electronic transactions in Thailand are not sufficient. Therefore, to make electronic transactions consumer protection fair and efficient, the proposals below are presented.

A) Thailand should enact of specific laws for consumer protection on electronic commerce issues.

The laws for consumer protection on electronic transactions should be enacted under the Consumer Protection Act. Since many people get trouble of electronic transactions and Consumer Protection Board has not launched any direct measurements for

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Attasartra, *supra n.*

⁹⁸ Artraksa, *supra n. 1.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Wongwattanasant, *supra n. 4.*

¹⁰² *Id.*

¹⁰³ *Id.*

consumer protection, electronic transactions, including contracts or any actions concerning electronic medias, specific functional units in charge of electronic transactions, and electronic specialists in charge of monitoring consumer protection affairs should be provided. Electronic transactions should be under the control of the Ministry of Information and Communication Technology (I.C.T). In addition, laws should be amended to grant the Consumer Protection Board full authority for consumer protection because at present time, Consumer Protection Board has only theoretical authority, resulting in the failure to fully solve trouble of the consumers.

Even with the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998, the above defects remain. The second Consumer Protection Act of 1998 was added to extend protection coverage on electronic transactions issues about consumer protection. Contract protection was added in Section 35 (bi) to 35 (nine) to make consumers fairness in contracts. In terms of regulating contract executions, the Contract Board is the organization provided the authority to regulate which business must be controlled for contract execution. This mechanism depends on policy of Contract Board to determine the necessity of consumer protection like problems about real estate sales or purchases contracts. The statements in such contracts should be controlled.

B. Preparation by public and private mechanism is required to solve consumer protection problems.

- The solutions to the lack for budget of government organizations in charge of the Consumer Protection Act include the increase of their budget or the decrease of unnecessary expenses. The government is required to study and analyze the structure and performance of such organizations. However, the allocation of budget by the Thai government is limited to the grant of budget. Each year, the government allocates a budget based on economic and financial conditions of that year. Upon good economic and financial situations, the government has enough budgets to be fully allocated to government departments. On the contrary, in case of economic crisis or a bad financial condition there will be insufficient budget for the government, and the problem of delay in government organizations remains. To increase or decrease annual budget, the government should study and analyze the structure and process of the Office of the Consumer Protection Board to allocate the budget in accordance with the real situation for each year, compare with the goal or policy set by the government, and have the organization set its financial plan in advance to efficiently spend the budget. Increasing or decreasing the budget is considered as one motivator to accelerate the work of government organizations. They indicate efficacy and quality of performance of

personnel and the future trend of the organization whether its size should be enlarged to achieve the goal or limited or decreased to fit necessity. The budget of such works can be used to support working activities of other public and private organizations instead.

- The budget should be allocated to employ personnel for law enforcement. The budget of the Office of the Consumer Protection Board, which is an important organization to efficiently enforce the Consumer Protection Act, should be separated from authorities in charge of inspection and those proceeding against business that violate the Consumer Protection Act or other laws. This part of the budget should be also spent as expenses for continuous working activities of personnel in other organizations like the Office of the Attorney General, Royal Thai Police, Court of Justices, and private organizations or associations. The enforcement budget can be regarded as an expense for active working activities against business entrepreneurs who neglect or intend to violate laws. Violators of consumer laws should be punished for offenses and feel fear of laws without waiting for consumers complaints prior to action.

- The government should support private sectors to set up private organizations in the form of independent organization for consumer protection and allocate a budget to these private organizations.

Allowing the consumers establish organization to protect consumers, create awareness buying goods or services from businesses. To support the establishment of private associations, the government should concretely set a detailed plan of its support. The plan should include the amendment of laws and policies for national development. For such awareness, sellers should be more careful than consumers. Besides the support for the establishment of associations and the federation of private consumer protection associations, the government should set explicit regulations, terms and working procedures for associations to be funded, including the grant of rights to donors and financial support for activities. The associations should be able to use their receipt of financial support to be deducted from personal income tax. The government should act as the director and supporter, rather than the controller or executor. The government should make consumers feel that consumer protection is not the direct duty or welfare of the government because this can make people lose interest in creating associations to protect their rights.

C. The public sector should support and provide knowledge to the consumers.

At present, government mechanisms in charge of consumer protection include the Consumer Protection Board, the Field Board, the authorities of the Office of the Consumer

Protection Board, government officers, and representatives of other government organizations. Even with their field knowledge and skill in their functions, in practice, in terms of problem perception or information relation, these cannot be compared with the experience of the consumers because they percept, get involved with the events and gain and lose from issues. Therefore, they can take action faster than government authorities without limitation from the rules and regulations of the government, which block the promptness, and bring higher operating cost and expenses. Giving rights to consumers for monitor business entrepreneurs from taking advantage of selling goods and providing services to consumers is the appropriate way. Consumers group or associations are meant to secure and protect consumer rights from business entrepreneurs in a prompt and direct path to consumer needs. Therefore, the government should support consumers to form consumer groups or associations for more systematic and efficient operation.

Major problems of supporting consumers to form consumer protection associations include creating shared concepts for people in terms of consumer rights protection as a duty of all people as consumers regardless consumer protection is welfare or duty of the government only. Therefore, the government must take the role of

creating knowledge, understanding, or basic concepts to consumers. The government should support regularly and continuously publicize consumers' rights through the media, and set up seminars or meetings for solving consumer protection problems. The government should also invite people or representatives of consumers to attend and give their opinion. The government can facilitate meeting venues and budget and expenses to people for setting up meetings or activities regarding consumer protection, amend laws or procedures for setting and certifying associations without much expense and allocate budgets to support association activities to suitably comply with government requirements. These create basic concepts that consumer protection is duty of people requiring coordination. After the establishment of organizations or associations for consumer protection, the government should give them rights on proceedings. According to basic concept, people as consumers, monitor themselves by forming associations with objectives to provide protection for members or ordinary people by giving information, consulting, giving recommendations about consumer protection to the public sector, and bringing complaint against businesses. Giving rights to associations to act as consumer representatives to make complaints to businesses in the case of a violation of consumer rights has not been advanced.

To avoid discouraging consumers who might feel overwhelmed by complicated legal process, legal court proceedings should be improved by creating a department for consumer protection cases in the court of justices. The current judgments on consumer issues are decided at district court or civil court of each province. Normally, these courts have many cases, which can affect the time spent on consumer protection issues. One method to facilitate and accelerate the sentence of consumer protection is the enactment of a law to separately create a Consumer Protection Court or Specific Court of Consumer Protection Case with easier judicial procedures, where consumers can file for court proceeding on their own or with assistance.

■ VII. Conclusion

In theory, there are many ways to protect consumers besides protective and corrective regulations by government organizations. Encouraging consumer to be aware and to protect their rights by creating consumer associations, providing information services, the price list of quality products and the fairest prices, and safety for consumption are ways for better consumer protection. In the U.S., awareness on consumer protection is raised at every level from consumers, manufacturers, the government, and many organizations in charge of

consumer protection. The Thai consumer protection system is deficient and lack proper remedy because laws, including laws necessity like food, medicine, clothing, and residence or laws on services like finance, banking, insurance, and private hospitals, focus on protection against damage incurred from goods and services. For these laws, consumer rights to complain against damages from these goods and services have not been provided. The basic concept and method of law enforcement are strictly based on the government's duty as protector and regulator of safety. In case of any problems incurred from consumption, the plaintiffs can exercise their rights to claim for compensation under general laws like the Civil and Commercial Laws and Civil Procedure Laws. The invalidity of consumer protection in terms of lawsuits has been chronically problematic.

In Thailand, laws or consumer protection acts on consumer protection do not exist for electronic transactions. Even, the Electronic Transactions Act regulating contractual transactions does not cover every issue of electronic transactions. The enforcement of the Unfair Contract Terms Act of 1997 is only a part of an effort to solve problems of normal exploitation of contract. Consumers face problems of exploitation by businesses on electronic transactions, in terms of transfer of ownership or rights to consume goods or services to connect

with electronics used for communication. Existing laws like the Consumer Protection Act of 1979 and the Consumer Protection Act of 1998 do not sufficiently protect consumers in electronic transactions.

