

LEGAL PROBLEMS OF E-COMMERCE TRUSTMARKS IN THAILAND*

*Chatanut Khiewcham***

ABSTRACT

Thailand is one of many nations that offer e-commerce trustmark schemes to overcome the lack of trustworthiness in e-commerce transactions. However, the characteristics of Thai e-commerce trustmarks i.e. the DBD (Department of Business Development) Registered and DBD (Department of Business Development) Verified, which are both administered by the Department of Business Development (“DBD”), Ministry of Commerce, do not follow the same principles that those in developed countries follow. As there is no specific Thai law for this case, both trustmarks are registered as certification marks under the Trademark Act B.E. 2534 even though their characteristics and purposes are different from certification mark principles. Moreover, the trustmark issuance and monitoring will be considered, if e-consumers who rely on such trustmarks have suffered loss due to the negligent actions of the DBD. It is unclear whether e-consumers can make any claim against the DBD for damage when they rely on a trustmark issued by the DBD.

The purpose of this thesis, is to study the principles of e-commerce trustmarks in Thailand, the United States and European Union with a goal of setting out appropriate legal measures to revise issues associated with trustmark principles in Thailand. The method used in this thesis to achieve this includes: documentary research in textbooks; journals, statutes; government publications; newspapers; experts’ opinions; public information public on the internet and other relevant documents that have originated from Thailand, the United States and the European Union.

*The article is summarized and rearranged from the thesis “Legal Problems of E-commerce Trustmark in Thailand”

** Graduate student of Master of Laws Program in Business Laws (English Program), Faculty of Law, Thammasat University.

The results of this thesis touch on five key issues: 1. The DBD should change its position to be as a supervisory one of trustmark principles as is the case in the U.S. and E.U., the DBD should support and oversee non-profit organizations or companies in the private sectors. 2. To protect the DBD Registered under the Trademark Act, the authorized use of the DBD Registered should be in writing and signed by the authorized persons of the DBD. 3. The DBD, as a trust service provider should be liable to the e-consumers for damage caused intentionally or negligently, if they have failed to comply with their obligations. 4. A periodic evaluation should be established as a necessary step of monitoring, as specified by McAfee and Norton. The DBD should request a reasonable fee or some funding to support improved monitoring. 5. Enforcement laws should be legislated according to the principle of the Regulation (EU) No 910/2014.

Keywords: E-commerce, Trustmark, Web seal

บทคัดย่อ

ประเทศไทยเป็นอีกประเทศหนึ่งในนานาประเทศที่นำเครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์ (Trustmark) มาใช้เพื่อแก้ปัญหาการขาดความน่าเชื่อถือในการทำธุรกรรมพาณิชย์อิเล็กทรอนิกส์ (E-commerce) แต่ลักษณะของเครื่องหมายรับรองความน่าเชื่อถือที่ใช้ปัจจุบัน เช่น เครื่องหมายรับรอง DBD Registered และ เครื่องหมายรับรอง DBD Verified ซึ่งจดทะเบียนและดำเนินการโดยกรมพัฒนาธุรกิจการค้า กระทรวงพาณิชย์นั้นมีลักษณะหลายประการไม่เป็นไปตามหลักการของเครื่องหมายรับรองความน่าเชื่อถือที่ยอมรับกันทางสากล เนื่องจากในปัจจุบันไม่มีกฎหมายเฉพาะเพื่อบังคับใช้กับกรณีนี้ เครื่องหมายรับรองทั้งสองจึงจดทะเบียนเป็นเครื่องหมายรับรองตามพระราชบัญญัติเครื่องหมายการค้า พ.ศ. 2534 แต่ตามหลักการนั้นทั้งลักษณะและวัตถุประสงค์ของใช้เครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์นั้นแตกต่างกับเครื่องหมายรับรอง นอกจากนั้นการออกเครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์ รวมถึงการควบคุมดูแลต้องมีการพิจารณาอีกครั้ง ซึ่งถ้าผู้ใช้ของออนไลน์เชื่อว่าเว็บไซต์ที่แสดงเครื่องหมายรับรอง DBD Registered และ เครื่องหมายรับรอง DBD Verified นั้นน่าเชื่อถือ แต่ได้รับความเสียหาย เพราะการกระทำใดอันเป็นการประมาทเลินเล่อของเจ้าหน้าที่กรมพัฒนาธุรกิจการค้า ไม่มีกฎระเบียบกำหนดไว้เป็นการเฉพาะว่าผู้ใช้ของออนไลน์สามารถเรียกร้องค่าเสียหายจากกรมพัฒนาธุรกิจการค้าซึ่งเป็นผู้ออกเครื่องหมายรับรองได้หรือไม่

วิทยานิพนธ์ฉบับนี้จัดทำขึ้นเพื่อศึกษาหลักการของเครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์ในประเทศไทย สหรัฐอเมริกา และสหภาพยุโรป เพื่อหาแนวทางที่เหมาะสมในการเสนอปรับปรุงการดำเนินการเครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์ในประเทศไทย วิทยานิพนธ์ฉบับนี้ศึกษาด้วยวิธีการศึกษาเอกสาร หนังสือ บทความ รัฐธรรมนูญ บทความของหน่วยงานรัฐ หนังสือพิมพ์ ความเห็นของผู้เชี่ยวชาญ ข้อมูลที่เผยแพร่ทางอินเทอร์เน็ต และเอกสารอื่นๆที่เกี่ยวข้อง จากประเทศไทย สหรัฐอเมริกา และสหภาพยุโรป

จากการศึกษา ผู้วิจัยมีข้อเสนอแนะ 5 ประเด็น ดังนี้ 1. กรมพัฒนาธุรกิจการค้า ควรเปลี่ยนแปลงบทบาทจากผู้ออกเครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์เป็นหน่วยงานควบคุมดูแลเช่นเดียวกับอเมริกาและสหภาพยุโรป และสนับสนุนให้องค์กรไม่แสวงหากำไรและหน่วยงานเอกชนเป็นผู้ดำเนินการแทน 2. เพื่อเป็นการคุ้มครองเครื่องหมาย DBD Registered ตามพ.ร.บ. เครื่องหมายการค้า กรมพัฒนาธุรกิจการค้า ควรอนุญาตให้ผู้ขอใช้บริการใช้เครื่องหมายฯ โดยทำเป็นหนังสือและลงลายมือชื่อรับรอง 3. กรมพัฒนาธุรกิจการค้า ในฐานะผู้ออกเครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์ควรรับผิดชอบต่อผู้ซื้อ หากความเสียหายนั้นเกิดเพราะเหตุแห่งการประมาทหรือความจงใจ 4. ควรมีการจัดทำการประเมินตามระยะเวลาเพื่อควบคุมมาตรฐานเครื่องหมายฯ เช่นเดียวกับ McAfee และ Norton 5. ควรมีการออกกฎหมายเฉพาะเพื่อบังคับใช้เช่นเดียวกับ Regulation (EU) No 910/2014

คำสำคัญ: พานิชย์อิเล็กทรอนิกส์, เครื่องหมายรับรองความน่าเชื่อถือบนเว็บไซต์, เครื่องหมายบนเว็บไซต์

Introduction

While e-commerce businesses are increasing worldwide, lack of trust is still the main obstacle of e-commerce. Security, privacy, unfamiliarity with services, lack of direct interaction, and credibility of information seem to be at the top of the list of consumers' concerns in making online transactions. This is also true in Thailand. The value of B2B (Business-to-Business) E-commerce in Thailand is a double the size of B2C (Business-to-Consumer). The 2014 Household Survey on the Use of Information and Communication Technology showed that many people have never booked or purchased goods and services via the internet because they were afraid of being deceived (36.7%), they were unable to see the actual goods (36.2%) and, they were concerned about security

(3.7%).¹ This indicates that lack of trust in e-commerce is the most important obstacle to e-commerce in Thailand. Trustmark schemes have been created to counter trustworthiness in e-commerce.

Thailand adopted a trustmark scheme around 2011, when the “DBD Registered” was created to register e-merchants. A survey from 2003 to 2015 showed that new applicants are increasing as a total of 12,573 e-merchants, are now able to use DBD Registered.² “DBD Verified” was then created as a more reliable alternative to the DBD Registered. The DBD Verified is used by 130 e-merchants, according to statistics from the period of July, 2014 - July, 2015.³ Although no cases have come before the Supreme Court, it is clear that e-consumers’ complaints are in an increasing trend. The statistics for July 2015⁴ showed that, eight persons submitted complaints about the trustmark receivers (the e-merchants) to the Department of Business Development, the trustmark service provider. Four persons claimed that they had paid for goods but did not receive the ordered goods, three persons did get goods as their requested, and one person received poor quality goods. This is reason enough to consider why the e-merchants who are granted trustmarks from the Department of Business Development, breach trust. It is important to recognize all the factors that could be the cause of this such as ineffective issuance procedures, criteria or monitoring.

Nature and Characteristic of E-Commerce Trustmarks

1. Nature of Trustmark

Although online shopping is a global phenomenon, e-customers may feel a lack of confidence in online merchants because they do not know their identity, cannot ascertain whether they are fraudulent

¹ The National Statistical Office, “*The 2014 Household Survey on the Use of Information and Communication Technology*”, p.53, <http://service.nso.go.th/nso/nsopublish/service/survey/ICTFull57-1.pdf>.

² Department of Business Development, “*Statistics DBD Registered and DBD Verified 2558*”, p.1, <http://www.trustmarkthai.com/ecm/public/newsletter/view.html?id=981>.

³ *Id.*

⁴ *Id.*

and cannot physically check the quality of products or services before they decide to make a purchase. Moreover, the safety and security of sending personal and financial information through the internet is unmonitored. We may say that the main reason for this issue is information asymmetry.

To counter this, different methods are used by web shop designers to increase trustworthiness of shops such as using a professional layout, showing user feedback, and using advertisements and third party certification-trustmarks. This research will outline e-consumers' concerns and the reasons why trust needs to be built. Developing trust is an important factor under conditions of uncertainty and risk, which are certainly the case in e-commerce. Trustmarks are mostly designed by trustmark organizations to increase consumer trust in e-commerce and protect consumers from unfair behavior during online shopping.⁵

Self-regulation was implemented to express the feelings of perhaps the majority of Internet users, who were afraid that governments might take their internet freedom away.⁶ J.P. Barlow, the founder of the Electronic Frontier Foundation powerfully expressed the self-regulatory character of the Internet as below:

“You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear. ... We will create a civilization of the Mind in Cyberspace. May it be more humane and fair than the world your governments have made before”⁷

A majority of authors accept the idea of self-regulation as it relates to the forming of mutual relationships in the form of agreements. It can be said that “self-regulation of the Internet by means of leaving everything for parties to set out in a contract is

⁵ Elena Chernovich, “*Trust in E-commerce : the moral agency of trustmarks*”, (Master Degree, Philosophy of science, technology and society, University of Twente, 2012), 6, in eassy, http://essay.utwente.nl/63443/1/Chernovich,_Elena_-_S1042726_-_Master_Thesis.pdf.

⁶ Przemyslaw Paul Polanski, *Customary Law of the Internet: in the Search for a Supranational Cyberspace Law*, p. 85 (2007).

⁷ Barlow, J.P. *A Declaration of the Independence of Cyberspace*. (1996).

contrasted with a top-down approach of regulating Internet behavior by means of harmonized statutes”.⁸

2. Definitions and Types of Trustmarks

Trustmarks are seals or labels that represent a certification of the web shop when displayed. Online trustmarks thus aim to assure consumers that a particular online seller has been validated by a trustmark service provider and was found to be safe. Therefore, a trustmark is a part of certification. The word “certification” derives from the Latin adjective *certus*, which means “determined, resolved, fixed, settled, purposed”.⁹ The most common perception of certification is that it gives some form of guarantee, generally of quality and dependability in their widest sense. The key element in the certification process is the third party, an independent party who is expected to give an assurance (a guarantee) of the qualities of some products or services through the issuance of a certificate.¹⁰

3. Difference between certificate marks and trustmarks

A certificate mark is a term which indicates that a product or service has been certified by a third party to comply with a set of requirements.¹¹ The US Patent and Trademark Office defines certificate marks as:

“[A]ny word, name, symbol, or device, or any combination thereof (1) used by a person other than its owner, or (2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this chapter, to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other

⁸ Przemyslaw Paul Polanski, *supra* note 6 at 86.

⁹ Lewis, C.T. *A Latin Dictionary*. New York: Oxford University Press, p. 320. (1996).

¹⁰ Paolo Balboni, *Trustmarks in E-commerce: the Value of Web Seals and the Liability of their Providers*, 24 (2009).

¹¹ Gilad L. Rosner, “*Trustmarks in the Identity Ecosystem*”, p. 3, <http://oixuk.org/wp-content/uploads/2014/09/Trustmarks-paper-FINAL-v2.pdf>.

characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.”¹²

In relation to trustmarks, much of the literature has focused on their use in e-commerce, sometimes they are called “web seals”. As defined in the EU online trustmarks:

“Trustmarks aim to assure consumers that a particular site or online seller has been validated by a trustmark provider and is found to run a safe sales process. They are designed to increase consumers' trust in the webshop that carries the trustmark”¹³

The US NSTIC (National Strategy for Trusted Identities in Cyberspace) captures this breadth succinctly: “A trustmark is used to indicate that a product or service provider has met the requirements of the Identity Ecosystem, as determined by an accreditation authority.”¹⁴

Accordingly, a trustmark has some different characteristics from a certification mark because it has a different purpose. A certificate mark is used by one person to certify the goods or services of others, but a trustmark is used by one organization to certify the websites of others. Moreover, the principles of a certificate mark are created as regulated rules by the government sector for protection of the mark owner's right over a certificate mark, while a trust mark is created under the purpose of self-regulation which when applied between private sector (act as a trustmark service provider) - private sector (act as a merchant), they are allowed to revise or change a mark which is more proper to their business than a certificate mark principle. A certificate mark can be enforced against others only in the territory that the owner has registered such mark, but a trust mark can be used in worldwide, the trustworthiness depends on a reliability of a trustmark service provider.

¹² See 15 U.S.C. § 1127.

¹³ Gilad L. Rosner, *supra* note 11, at 3.

¹⁴ Gilad L. Rosner, *supra* note 11, at 4.

Trustmarks are also distinct from brands because brands relate to origins and trustmarks relate to processes.¹⁵ For example, the IBM logo indicates the source of a product whereas a mark from the British Scheme Organization indicates that a service has undergone a certification process. Moreover, brands are used to communicate characteristics, but for something to be called a trustmark it must be a process or mechanism that allows someone to trust it.¹⁶ Whereas the Rolex watch brand is used to communicate quality, trustworthiness and an aspirational sense of value and class, the Better Business Bureau OnLine seal is meant to communicate reliability and trustworthiness.¹⁷

E-Commerce Trustmarks under Foreign Laws

The United States

Trustmark schemes in the US are administered by non-profit organisations such as trustmark service providers. Furthermore, trustmarks are distributed by private companies, especially security scanning service operators. The most important trustmarks in the U.S. are: TRUSTe; BBBOnline; BBBOnline; WebTrust; McAfee Secure; and Norton Secure. The aim of trustmarks is to increase trust in e-commerce by issuing trustmarks to verify e-commerce websites according to their specific criteria and standards.

There are no specific laws that apply to trustmark schemes in the U.S., different laws will apply to each case depending on the issues. Other than this, trustmark service providers are under the control of the Federal Trade Commission (FTC). For example, in the case of TRUSTe, it was charged by the FTC for deceiving consumers through its privacy seal program. The details of the case were that TRUSTe failed to conduct annual recertifications of over 1,000 incidences for companies, which held TRUSTe privacy seals and

¹⁵ Gilad L. Rosner, *supra* note 11, at 6.

¹⁶ Gilad L. Rosner, *supra* note 11, at 6-7.

¹⁷ *Id.*

were to be renewed every year. Moreover, TRUSTe became a for profit organization in 2008, but it still claimed its non-profit status after that time. Therefore, the FTC made an order that “TRUSTe is prohibited from making misrepresentations about its certification process or timeline, as well as barred from misrepresenting its corporate status or whether an entity participates in its program”. It was also ordered to pay \$200,000 as part of the settlement under the COPPA rule for safe harbor programs.¹⁸

European Union

Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures was announced on December 13, 1999.¹⁹ The purpose of this Directive was to facilitate the use of electronic signatures and to contribute to their legal recognition. It establishes a legal framework for electronic signatures and certain certification-services in order to ensure the proper functioning of the internal market. It does not cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements prescribed by national or community law nor does it affect rules and limits, contained in national or community law, governing the use of documents.

Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market was announced on July 23, 2014 for repealing Directive 1999/93/EC.²⁰ EU members are

¹⁸ Federal Trade Commission, “*TRUSTe Settles FTC Charges it Deceived Consumers Through Its Privacy Seal Program*”, p.1, <http://www.ftc.gov/news-events/press-releases/2014/11/truste-settles-ftc-charges-it-deceived-consumers-through-its>.

¹⁹ EU-Lex, “*Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures*” (May. 16, 2016), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0093:en:HTML>.

²⁰ EU-Lex, “*Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market*” (May. 15, 2016), <http://eur-lex.europa.eu/legal->

aware that building trust in the online environment is key to economic and social development. Lack of trust, in particular because of a perceived lack of legal certainty, makes consumers, businesses and public authorities hesitant to carry out transactions electronically and to adopt new services. This Regulation seeks to enhance trust in electronic transactions in the internal market by providing a common foundation for secure electronic interaction between citizens, businesses and public authorities, thereby increasing the effectiveness of public and private online services, electronic business and electronic commerce in the Union. Directive 1999/93/EC of the European Parliament and of the Council, dealt with electronic signatures without delivering a comprehensive cross-border and cross-sector framework for secure, trustworthy and easy-to-use electronic transactions. This Regulation enhances and expands the *acquis* of that Directive.

E-Commerce Trustmark under Thai Law

The Department of Development, Ministry of Commerce (the “DBD”) has created the two types of e-commerce trustmarks in Thailand: 1. DBD Registered, and 2. DBD Verified.²¹ DBD Registered is a trustmark given to certify that the merchant, either an ordinary or a juristic person, has successfully registered his/her online business operations with the DBD, and that the buying and selling of products or services can be conducted as e-commerce transactions. The DBD Verified is only given to a juristic person that has registered its online business operations and met all qualifications and criteria specified by the DBD for certifying reliability of electronic business operations. The reliability level of DBD Verified is higher than DBD Registered.

content/EN/TXT/HTML/?uri=CELEX:32014R0910&qid=1466948929663&from=en.

²¹ Department of Business Development, Ministry of Commerce, “*Frequently Asked Questions*”, p.10, <http://www.trustmarkthai.com/ecm/content/faq001.pdf>.

Subject to Section 91 of Trademark Act B.E. 2534, “the authorization of others to use a certification mark for goods or services shall be in writing and signed by the owner of the certificate mark.” This provision states about a form of certificate evidence. All juristic acts and contracts which are not in a form prescribed by law are void under section 152 of Civil and Commercial Code²². DBD Registered and the DBD Verified are registered as the certificate marks under Trademark Act B.E. 2534, thus to authorize others to use the marks, the DBD shall provide a certificate in writing signed by an authorized person for each registered trustmark owner. In fact, if the DBD approves an e-merchant on DBD Registered, the DBD must send a trustmark source code via email to the e-merchant’s e-mail address. A successful e-merchant is required to show the DBD Registered seal on the first page of its e-commerce website. There is no written evidence or procedure which shows us that the authorized use of the DBD Registered is made in writing and signed by the DBD as obligated by Section 91 of the Trademark Act B.E. 2534.²³ It may be said that it is not a lawful authorization of a certificate mark under the Trademark Act and such authorization of the DBD Registered is void under section 152 of Civil and Commercial Code. The e-merchants may be at risk of an unauthorized use of DBD Registered, which would be damaging for them and cause loss of trust.

Analysis of Problems

1. The characteristics of trustmarks

List	US	EU	Thailand
Operator	<ul style="list-style-type: none"> Non-profit organisation or private sector 	<ul style="list-style-type: none"> Non-profit organisation or private sector 	<ul style="list-style-type: none"> Government Sector

²² See section 152 of Thai Civil and Commercial Code.


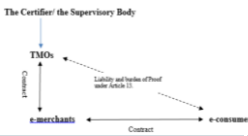
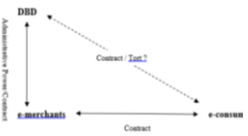
²³ วัศ ดิงสมิตร, “คำอธิบายกฎหมายเครื่องหมายการค้า”. กรุงเทพมหานคร: สำนักพิมพ์นิติธรรม, 2545, น. 173(Wat Tingsaming, “*the explanation of trademark law*”. Bangkok: Nititham, 2002, p. 173)

Character	<ul style="list-style-type: none"> Trust mark or Web seal 	<ul style="list-style-type: none"> Trust mark or Web seal 	<ul style="list-style-type: none"> Certificate mark under Trademark Act B.E. 2534
-----------	--	--	--

Most trustmark service providers in the US and EU are non-profit organizations or companies in the private sectors. However, trustmarks in Thailand are operated by the government sector, namely the DBD which does not follow the trustmark principles of developed countries. When the government sector acts as a trustmark service provider, there is weak supervision and monitoring as it is difficult to assign such supervision over trustmark service providers. Because effective monitoring is also key for building trust in trustmarks, the use of hi-tech solutions is necessary.

The principle of a trustmark is specific, according to the OECD guidelines. In both the US and EU, they are set up distinct from certificate marks and are not required to be registered as certificate marks under their trademark acts. This contrasts with Thai trustmarks which are registered as certificate marks under the Trademark Act B.E. 2534. It is therefore necessary for Thai trustmarks to stop being dealt with according to trademark rules as at present they cannot be enforced worldwide unless they are registered all around the world.

2. The legal relationship with and liability of trustmark service Providers

List	US	EU	Thailand
Legal relationship			
Liability of trustmark service	Yes	Yes (See Article 13 of the Regulation (EU))	?

provider		No 910/2014)	
----------	--	--------------	--

In the U.S., no specific requirements are set out for a negligent action of trustmark service providers. Thus, off-line principles are applied in the case of torts and contracts laws. In the EU, trustmark service providers shall be liable for damages caused to any natural or legal person due to failure to comply with the obligations under the regulation, as stated in Article 13 paragraph 1, except their limitations are informed to the consumers in advance, service providers will not be liable for damages arising from the use of services exceeding the indicated limitation according to Article 13 paragraph 2.

In Thailand, no specific law has been announced, they are not stated in Regulations of using the DBD Registered and DBD Verified. Thus, Section 5 of Administrative Procedure Act B.E. 2539 “Administrative order” is applied to this case.

3. The monitoring of trustmark receiver

List	US	EU	Thailand
Active monitoring	Yes	Yes	No
Passive monitoring	Yes	Yes	DBD Registered and DBD Verified

Active monitoring is a main required process which both the U.S. and EU set as an essential method for building trustworthiness of online shopping. Effective monitoring should be set and applied to Thai trustmarks all well.

4. Enforcement of laws specific to trustmarks

US	EU	Thailand
----	----	----------

<ul style="list-style-type: none"> • Yes (under the control of Federal Trade commission) 	<ul style="list-style-type: none"> • Yes (See Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market) 	<ul style="list-style-type: none"> • No Specific law • Present applying law: Trademark Act
---	--	--

The proper rules and regulations should be a focus and concern. The U.S. and EU also follow and adopt the principles of OECD guidelines. Their laws are continually developed and adapted for supporting an online economy. No specific law is applied for Thai trustmarks prepared by the DBD in Thailand. A specific act should be drafted and set.

Conclusions and Recommendations

E-commerce trustmarks are designed to be understandable to all e-consumers that websites meet the trustmark requirements under the standards of the trustmark service provider. The aim of issuing trustmarks is to overcome the lack of trust in online shopping which is the key element in e-commerce. Trustmark service providers will issue a trustmark to e-merchants only if the e-merchants meet their standards e.g. security, privacy, business practice. E-merchants hope that, by displaying the trustmark on their websites, e-consumers will trust their certified practice and feel more confident about parting with personal data and carrying out a transaction on the website.

The key elements of a trusted certification practice which are accepted by many countries are certifier independency, impartiality in the auditing procedure, active monitoring of the certified company, certifier enforcement power and certifier accountability. Fees are another key point, especially in relation to TMO independence. Every trustmark service provider requires an annual fee from e-merchants.

The results touch on five key issues:

1. The characteristic of trustmarks - the DBD should change its position to be as a supervisory one of trustmark principles as is the case in the U.S. and E.U., the DBD should support and oversee non-profit organizations or companies in the private sectors that promote e-commerce trustmarks in Thailand.

2. Trustmark certification process - if the DBD proposes its trustmark (DBD Registered) to be protected under the Trademark Act, the authorized use of DBD Registered should be in writing and signed by an authorized person of the DBD, as for the pre-certification phase of the DBD Verified, the standards of certification should be set up by a professional association and follow the international practices i.e. those set out under Regulation (EU) No. 910/2014; in the part of the post-certification phase, a certified applicant who has had his trustmark revoked, should not have the right to re-apply for certification again, for at least 5 years. A blacklist of untrusted e-merchants should be published.

3. The legal relationship and liability of a trustmark service provider - the DBD, as a trust service provider should be liable to the e-consumers for damage caused intentionally or negligently, if they have failed to comply with their obligations.

4. The monitoring of trustmark receivers - a periodic evaluation should be established as a necessary step of monitoring, as specified by McAfree, and Norton. The DBD should request a reasonable fee or some funding to support improved monitoring.

5. Enforcement of laws specific to trustmarks - enforcement laws should be legislated according to the principle of the Regulation (EU) No 910/2014, especially regarding a qualified trust service provider's liability and burden of proof, trustmark issuance procedures, and monitoring process including setting up a supervisory body to control all trustmark aspects.

REFERENCES

Books

Barlow, J.P. *A Declaration of the Independence of Cyberspace*, 1996.

Balboni, Paolo. *Trustmarks in E-commerce: the Value of Web Seals and the Liability of their Providers*, 2009.

Lewis, C.T. *A Latin Dictionary*. New York: Oxford University Press, 1996.

Polanski, Przemyslaw P. *Customary Law of the Internet: in the Search for a Supranational Cyberspace Law*, 2007.

วัศ ดิงสมิตร, “คำอธิบายกฎหมายเครื่องหมายการค้า”. กรุงเทพมหานคร: สำนักพิมพ์นิติธรรม, 2545, น. 173

(Wat Tingsaming, “*the explanation of trademark law*”. Bangkok: Nititham, 2002, p. 173)

Eletronic Media

Chernovich, Elena. “*Trust in E-commerce : the moral agency of trustmarks*”. (Master Degree,

Philosophy of science, technology and society, University of Twente, 2012), 6, in eassy,

[http://essay.utwente.nl/63443/1/ Chernovich,_Elena_-
S1042726-_Master_Thesis.pdf](http://essay.utwente.nl/63443/1/Chernovich,_Elena_-_S1042726_-_Master_Thesis.pdf).

(accessed November 20, 2014).

Department of Business Development. “*Statistics DBD Registered and DBD Verified 2558*”.

[http://www.
trustmarkthai.com/ecm/public/newsletter/view.html?id=981](http://www.trustmarkthai.com/ecm/public/newsletter/view.html?id=981).
(accessed

November 18, 2014).

Federal Trade Commission. “*TRUSTe Settles FTC Charges it Deceived Consumers Through Its*

Privacy Seal Program". [http://www.ftc.gov/news-events/press-](http://www.ftc.gov/news-events/press-releases/2014/11/truste-)

[settles-ftc-charges-it-deceived-consumers-through-its](http://www.ftc.gov/news-events/press-releases/2014/11/truste-settles-ftc-charges-it-deceived-consumers-through-its). (accessed November 20, 2014).

Gilad L. Rosner. "*Trustmarks in the Identity Ecosystem*".

<http://oixuk.org/wp-content/uploads/>

[2014/09/ Trustmarks-paper-FINAL-v2.pdf](http://oixuk.org/wp-content/uploads/2014/09/Trustmarks-paper-FINAL-v2.pdf). (accessed August 19, 2015).

National Statistical Office. "*The 2014 Household Survey on the Use of Information and*

Communication Technology".

<http://service.nso.go.th/nso/nsopublish/service/survey/>

[ICTFull57-1.pdf](http://service.nso.go.th/nso/nsopublish/service/survey/ICTFull57-1.pdf). (accessed April 20, 2015).

Study A Pan-European Trust mark for E-Commerce Possibilities and Opportunities

IP/A/IMCO/ST/2012-04. p.18. (accessed April 10, 2014).

EUR-Lex. "*Directive 1999/93/EC of the European Parliament and of the Council of 13*

December 1999 on a Community framework for electronic signatures". <http://eur-lex>.

[europa.eu/LexUriServ/LexUriServ.do?uri=](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=)

[CELEX:31999L0093:en:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0093:en:HTML). (accessed

May 16, 2016).

EUR-Lex. "*Regulation (EU) No 910/2014 of the European Parliament and of the Council of*

23 July 2014 on electronic identification and trust services for electronic transactions in

the internal market". [http://eur-lex.europa.eu/legal-](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=)

[content/EN/TXT/HTML/?uri=](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=)

[CELEX:32014R0910&qid=1466948929663&from=en](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0910&qid=1466948929663&from=en).

(accessed May 16, 2016).