

CONSUMER PROTECTION REGARDING PRE- CONTRACTUAL INFORMATION ON E-COMMERCE*

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ABSTRACT

In selling, the asymmetry of information between traders and consumers is one of the most common problems. It refers to goods or service that take place in trading where one party, traders, normally having more information than another party, consumers. It shows inequality between both parties which is usually considered as a reason for controlling transactions. In addition, the information for the consumer is questioned due to the fact that the nature of e-commerce transaction is the absence of face-to-face interaction between traders and consumers so the consumers have no opportunity to examine or test the goods or service or to know the information related to traders before they involve with any transaction.

Moreover, as the absence of physical interaction, consumer may face with various problems while making purchase electronically due to the contract making process become longer and more complex. Accordingly, the time before the conclusion of a contract is very important as it enable the potential consumers to truly acknowledge and understand the object of contract details and their rights in order to make an informed consent before dealing with e-commerce transaction.

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Considering from the current Thai laws, consumers who purchase goods or service over the internet shall have the right to be informed some information depending on the trader's discretion according to the lack of proper control by law. Hence, in order to know and realize the possible solutions for Thai laws, the study of foreign laws is very crucial. This article provides an overview of pre-contractual information on e-commerce under European Union Laws and the United Kingdom laws as they have specific provisions in controlling trader's duty in providing pre-contractual information on e-commerce before the consumer is bound by the contract. Hence, this article will analyze the legal measures for controlling trader on the stated issue and propose the appropriate solutions for Thai laws.

Keywords: pre-contractual information, consumer protection, e-commerce

บทคัดย่อ

ในการซื้อขายสินค้าและบริการ ความไม่เท่าเทียมกันทางด้านข้อมูลระหว่างผู้ประกอบการและผู้บริโภคถือเป็นปัญหาหลักที่เกิดขึ้นบ่อยครั้ง อาจกล่าวได้ว่าสินค้าหรือบริการที่ทำการชื้อขายนั้น ผู้ประกอบการซึ่งเป็นผู้สัญญาฝ่ายหนึ่งมักจะมีข้อมูลมากกว่าคู่สัญญาอีกฝ่ายหนึ่งซึ่งก็คือผู้บริโภค แสดงให้เห็นถึงความไม่เท่าเทียมกันระหว่างคู่สัญญาทั้งสองฝ่าย จึงเป็นที่มาของการควบคุมการติดต่อทางธุรกิจดังกล่าว ยิ่งไปกว่านั้น การให้ข้อมูลแก่ผู้บริโภคเกิดเป็นประเด็นปัญหาขึ้นเนื่องจากลักษณะของการพาณิชย์อิเล็กทรอนิกส์ซึ่งไม่มีการสื่อสารกันซึ่งหน้าระหว่างผู้ประกอบการและผู้บริโภค ดังนั้นผู้บริโภคจึงไม่มีโอกาสได้พิจารณาตรวจสอบหรือทดลองสินค้าหรือบริการ รวมถึงไม่ทราบข้อมูลเกี่ยวกับผู้ประกอบการก่อนที่จะเข้าสู่ผูกพันตามธุรกรรมต่างๆ

จากการไม่มีการติดต่อกันซึ่งหน้า ผู้บริโภคอาจพบปัญหาต่างๆขณะทำการซื้อผ่านทางอิเล็กทรอนิกส์ เนื่องจากขั้นตอนการทำสัญญาซับซ้อนมากขึ้น ดังนั้น ระยะเวลาก่อนเข้าทำสัญญาจึงมีความสำคัญอย่างยิ่ง ทั้งนี้ เพราะผู้บริโภคสามารถรับรู้และเข้าใจสาระสำคัญของสัญญา รายละเอียดและสิทธิต่างๆของตนเพื่อที่จะแสดงเจตนาด้วยใจสมัคร ก่อนที่จะตกลงเข้าทำธุรกรรมทางอิเล็กทรอนิกส์ได้

พิจารณากฎหมายไทยในปัจจุบันพบว่า ผู้บริโภคที่ซื้อสินค้าหรือบริการทางอินเทอร์เน็ตจะมีสิทธิได้รับข้อมูลบางส่วนตามดุลยพินิจของผู้ขาย เนื่องจากกฎหมายไทยยังขาดการควบคุมหน้าที่ในการให้ข้อมูลก่อนเข้าทำสัญญาทางพาณิชย์อิเล็กทรอนิกส์ของผู้ขายที่เหมาะสม ดังนี้ เพื่อที่จะได้ทราบและตระหนักถึงวิธีการแก้ไขปัญหาที่เกิดขึ้นในกฎหมายไทย จึงมีความจำเป็นอย่างยิ่งที่จะต้องศึกษากฎหมายต่างประเทศ บทความนี้ได้นำเสนอภาพรวมของการให้ข้อมูลก่อนเข้าทำสัญญาทางพาณิชย์อิเล็กทรอนิกส์ในกฎหมายของสหภาพยุโรปและสหราชอาณาจักร ซึ่งได้มีการกำหนดบทบัญญัติไว้เป็นการเฉพาะในการควบคุมหน้าที่ของผู้ขายในการให้ข้อมูลก่อนเข้าทำสัญญาทางพาณิชย์อิเล็กทรอนิกส์แก่ผู้บริโภค ดังนั้นบทความนี้จะวิเคราะห์มาตรการทางกฎหมายที่ใช้ในการควบคุมผู้ขายในเรื่องดังกล่าว และเสนอมาตรการในการแก้ไขปัญหาที่เกิดขึ้นในกฎหมายไทย

คำสืบค้น: การให้ข้อมูลก่อนสัญญา, การคุ้มครองผู้บริโภค, การพาณิชย์อิเล็กทรอนิกส์

The trader is generally responsible for providing advice to certain information in order to avoid the declaration of intention under a mistake by the consumer. Later on, there is an adjustment from providing information to certain level information for an advice to provide information concerning goods and services. The reason behind this is that an advice is free willing of the trader. However, the consumer protection law prescribes it as a compulsory duty that the trader is required to provide information about goods and service including details of the contract which is to be legally binding.¹

Pre-contractual information is the core factor affecting consumer buying decision described as the information process² by the research studied by University of Amsterdam, Institute for Information Law (IViR). According to the research, the consumer

¹ ดารารพร ธีระวัฒน์, “รายงานวิจัยฉบับสมบูรณ์ เรื่องสัญญาผู้บริโภค วิเคราะห์เปรียบเทียบหลักเกณฑ์ การคุ้มครองผู้บริโภค ด้านสัญญาของต่างประเทศและของไทย”, ศูนย์วิจัยและให้คำปรึกษาคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ (2557) น. 17-18 (Daraporn Thirawat, “**The Full Report of the Consumer Contract: The Comparative Analysis of the Consumer Protection regarding Contracts between Foreign Countries and Thailand**”, Research and Consultancy Institute (2014) p.17-18

² European Commission, “*EU cloud computing expert group: discussion paper pre-contractual information requirements and cloud services*”, http://ec.europa.eu/justice/contract/files/expert_groups/discussion_paper_pci_en.pdf (accessed on November 3, 2015)

information being used as a tool to inform and empower consumers, is not only critical to provide them necessary information, but also important to communicate the information with the practical ways that consumer usually interact or gain benefit from.

Hence, the rationale to specify legal obligation of the trader to provide information are as follows:

1) The asymmetries of information between traders and consumers in the business to consumer transaction (B2C) raise the rationale of pre-contractual information requirements that allows consumer to make an informed decision³, in which the decision has been made based upon an understanding of the facts. In order to reduce an inequality in terms of knowledge between parties, the pre-contractual information requirements can be considered as a strong justification for intervention in consumer contracts. Especially in e-commerce transaction, traders and consumers are trading at a distance. The information is only available to the consumer in the trader's home page address. The goods or services cannot be examined, touched or experienced physically. Consumers apparently receive only limited information on traders and have very little access to the necessary information.

2) A business contract might not only be difficult for consumers to understand, but there is also some conflicts of interests between traders and consumers. In practice, traders unilaterally impose the terms and conditions of the contract in a way that benefit their interests. Therefore, the law must provide information to the disadvantaged party in order to make he or she knows and understands and to let them make the contract with truly mutual agreement.

3) Physical interaction between trader and consumer in e-commerce transaction is absent. Thus, consumer may encounter with numbers of problems while making purchase electronically due to the

³ Giesela Ruhl, "*Consumer Protection in Choice of Law*" <http://www.lawschool.cornell.edu/research/ilj/upload/ruhl-final.pdf> (accessed on September 15, 2015)

longer and more complexed of the contract making procedure. It reflects concerns of informational change into digital form: the procedure that is required in the process of contract making could be vanished, which means that consumers may unintentionally enter in to the binding contracts and because of the characteristic of the medium, the risk of an error in electronic document may increase. Thus, the trader must allow their consumers awareness arisen in the ordering process to detect and correct errors.

The right of the consumer to be informed is purposely to protect the consumers in particular. It requires the trader to provide information concerning goods or service as to enhance the ability of the consumer decision-making to purchase. It can be concluded that the duty to provide information is crucial to protect consumers as consumer being perceived mostly as a weaker party comparing to trader in respect of the bargaining power and knowledge of goods and service. The consumer protection law intends to equalize this balance between both parties by insisting the transparency of the information concerning goods and service that must be thoroughly provided in the process of offering information or in the earlier stage before concluding the contract. As a consequence, consumers can reflect their true preferences in making their decisions.

Although Thai law has the Act concerning electronic transaction (Electronic Transaction Act B.E. 2544), the Act did not cope with the consumer protection refer to the duty to provide pre-contractual information on e-commerce. Moreover, it only aims to support the legal status of an e-commerce transaction, such as offer and acceptance, in order to support the validity of the contracts concluded by electronic means.

Unlike foreign countries' law and regulations, Thai law, the protection of consumers' right in receiving pre-contractual information on e-commerce is ineffective although there are some laws supporting the right of consumers to acknowledge the pre-contractual information before entering into the contract as follows;

1) Duty to inform the declaration of intention and the juristic act in accordance to the CCC section 149 together with section 354. It could be interpreted that the declaration of intention of consumer should be made with the voluntary act and it should not be made by mistake, fraud or duress.⁴ Hence, the offering for sale must be clearly informed the information concerning goods and service.⁵ From the interpretation, the right to be informed is actually in the general principles of Thai law that it must be clearly and certainly provided. However, it is broadly defined of how the offer should be made. It does not prescribe trader's duty in providing the specific information in order to explicitly protect the consumer.

2) The right to receive pre-contractual information in fraud by silence regarding to the CCC section 162. The act is fraud if the seller expresses his intention to be in silence although he has duties by law or even when he does not have a duty by law, but by good morals to inform the fact or quality of the goods. As the duty to inform by good morals is imprecise and it is only ruled by the court, pre-contractual information on e-commerce is uncertain that which specific pre-contractual information that trader should provide. Thus, trader might use this loophole to conceal the information that adversely affects to the consumer buying decision.

The remedy available for consumer is that the declaration of intention procured by fraud is voidable. When the consumer avoided the voidable act, the consumer must return the property to the trader and the trader has to return the money paid to the consumer.

3) The right to receive the property with the qualification as same as description provided as per the principle of Sales by Description regarding to the CCC section 503 paragraph 2. As e-commerce is the form of communication in order to provide the

⁴ ศนันท์กรณ (จำปี) โสทธิพันธุ์, “คำอธิบายนิติกรรมสัญญา”, วิทยุชน (2550) น. 34-35 (Sanankorn (Jampee) Sothipun, “**Juristic Acts and Contracts**”, Winyuchon (2007) p.34-35

⁵ *Id.* p.260.

information to the consumers directly with the objective to let the consumers in the remote area declare their intention to purchase the goods and services, hence, it could also be considered as the sale by description according to the CCC.⁶ Considering that the description prescribed by the trader is the pre-contractual information. However, traders have freedom on the presence of the content on their webpage, given that the goods delivered has to be in the same condition as per described by the trader.

The remedies available under the CCC for consumer are right to refusal of performance under section 320; however, in e-commerce transaction, consumer always receive the goods by post so the refusal of performance might be inapplicable; right to refusal of settlement under section 369; in practically, this right can barely applied to reality for e-commerce business since consumers are required to pay in advance before the goods being delivered, right to claim for damages under section 215 and right to rescind from the contract under section 387-389.

4) The right to receive information regarding to the Consumer Protection Act B.E.2522, section 4(1). Considering that the information provided is broadly defined and it is under trader's discretion. The consumers are entitled to the right to be leaded when the right of consumers under section 4(1) is violated.

5) The right to receive information statement contained in data communication for offering to sell goods or service regarding to the Direct Sales and Direct Marketing Act B.E. 2545 provides that data communication shall be manipulated by the ministerial regulations according to section 28; however, it has not been yet enacted. Moreover, section 29 of this Act which stipulates that the provisions of the law on Consumer Protection in respect of Consumer

⁶ พลอย เจริญสม, “การขายตามคำพรรณนา”, http://digi.library.tu.ac.th/journal/0051/2_1_jul_2551/30PAGE292_PAGE304.pdf (accessed on February 6, 2016)
(Ploy Charoensom, “*Sales by Description*”)

Protection against Advertising shall apply to the data communication for offering to sell goods or services by the direct marketing businessman, it solely controls the information which is considered as unfair. There is no written duty for traders to provide specific detail. In addition, the authority of direct sales and direct marketing board is only to control the communication of information of entrepreneur after the loss has been occurred rather than to protect the damage from happening. According to the Act, trader's duty in providing specific information to the consumer is found only post-purchase process.

When the right to be informed under section 29 is violated, it is under the opinion of the direct sales and direct marketing board to rectify, prohibit or correct the information. Besides that the consumers is entitled the right to replace goods in case of its defect under section 33 of the Direct Sales and Direct Marketing Act B.E.2545 as Prof.Kittisak Prokati interpreted that when the trader certifies any of the purchased goods or service qualification, such certification shall be a part of the contract and the trader shall be liable for the defected goods when the qualification of the goods certified fails the conformity.⁷

According to the uncertainty of pre-contractual information requirements under Thai laws, the case shall be decided by analogy to the most nearly provision, and in default of such provision, by the general principles of law.⁸ Regarding to the study, the most nearly applicable law would be a sale by description it could be interpreted the binding nature of pre-contractual information that the information given pre-purchase is a part of the contract that the trader must follow.

⁷ กิตติศักดิ์ปรกติ, “ผลงานวิจัย เรื่อง ความรับผิดชอบเพื่อขำรุดบกพร่องในสัญญาซื้อขาย”, โครงการวิจัยเสริมหลักสูตรมหาวิทยาลัยธรรมศาสตร์ (2532) น.27 (Kittisak Prokati, “**Liability for Defects in Sales Contract**”, Curriculum research project Thammasat University (1989) p.27)

⁸ The Civil and Commercial Code, § 4

From the study, the problems related to consumer protection regarding pre-contractual information on e-commerce under Thai law could be summarized as follows:

Firstly, the ordering process on e-commerce may have several stages which cause confusion to the consumer. Thus, when placing an order, the consumers, unintentionally enter into a contract or even make mistakes during the purchasing process. This brings the issues why trader should take reasonable and logical steps to allow consumers correcting the errors of their order before the contract concluded.

Secondly, with an ambiguity to identify trader's geographical location on the internet, considering to Thai law and regulations, traders are obliged to inform information concerning the status and other details about the trader to the consumer only upon the prescription of Committee on Advertisement. Accordingly, the sale of the other goods and service besides from the prescription, the trader is not obliged to provide information about himself to the consumer.

Thirdly, information concerning the main characteristics of the goods or service, considering from Thai law, it does not mention about the trader's duty providing specific information which affects to the consumer buying decision before he or she places an order.

Fourthly, with insufficient information requirement of traders from the notification of the Central Commission on Prices of Goods and Services regarding the displaying prices of goods or services B.E. 2558, the consumers may face problems of misleading, and difficulties in planning or calculating their expenses and purchasing power.

Fifth, other information included in contract considering from the current Thai law, it controls only the process after the contract is concluded.

Sixth, right of withdrawal, as the goods and service sold in the direct marketing can be classified into two types in which the consumer is entitled the right to terminate the contract and those who do not have such right. The non-existence of pre-contractual information in this situation could cause consumer to take risk purchasing goods or services by description without knowing that the termination right is applied to which goods and service.

Seventh, when the consumers want to claim the contract being made under a mistake, they, as a plaintiff, will bear the burden of proof according to the Civil Procedure Act. The problem is on the new technology, or the internet, in which the communication used is out of control by the consumer.⁹ As easily adjusting information or closing down the website of the traders, the plaintiff could find difficulties in collecting the document as the burden of proof to the court.

Eighth, the statutory remedies available for the consumer under the Thai jurisdiction in case of the pre-contractual information is not complied with could be found in many laws which could cause confusion to the consumers to pursue their remedies. In addition, the right to replace goods only explicitly specified only in case of its defect which also could cause confusion to the consumers whether they can claim for the right to replace goods in case where the goods is not in line with the information traders have certified pre-purchase.

Due to an insufficiency in providing pre-contractual information under Thai laws considering from the Consumer Protection Act B.E.2522, the CCC, and the Direct Sales and Direct Marketing Act B.E. 2545, it leads to the conclusion that the consumers enter into the contract without being well-informed of the information regarding goods and services. Consequently, consumers are more likely to make a declaration of intention under a mistake as

⁹ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Recital 22

a consumer, who has less information comparing to traders or called information asymmetry, have some difficulties to reflect their true preference in making a decision. These are loopholes the traders might use to facilitate themselves in selling goods or service, while the consumers are being exploited with the insufficient pre-contractual information that lead to affect adversely the consumers buying decision. As a result, it would negatively influence consumer confidence in purchasing goods or services via e-commerce channel and thus, consequently, it could affect to the whole industry and stability of the economy. Therefore, in order to harmonize interest between both parties, the consumer protection in pre-contractual information should be taken seriously and enacted under Thai law.

From the study in foreign laws, both European Union laws; Directive 2011/83/EU on consumer rights, Directive 2000/31/EC on Electronic Commerce and the United Kingdom laws; the Consumer Contracts (Information, Cancellation and Additional Charges) Regulation 2013, Consumer Rights Act 2015 and the Electronic Commerce Regulations 2002 control the traders' duty in providing specific pre-contractual information on e-commerce in order to resolve asymmetry of information in the B2C transactions. The European Consumer Centre Germany states that the provisions on information obligation of the Electronic Commerce Directive influences consumers purchasing behavior on the website because the clear detail of the businesses such as company's data, price, and technical steps for contract conclusion has power on consumer's voluntariness to engage in doing business.¹⁰

As several organizations support the idea of the provisions on information requirements that are perceived as a good exercise for a firm which increase consumer confidence and results in increased

¹⁰ European Commission DG internal Market and Services Unit E2, "*Study on the Economic Impact of the Electronic Commerce Directive, Final Report*", http://ec.europa.eu/internal_market/e-commerce/docs/study/ecd/%20final%20report_070907.pdf (accessed on September 1, 2016)

willingness of consumers to engage in the online activity. Thus, the following information shall be concerned;

Importantly, the law tries to equalize the responsibilities between traders and consumers when there is a cancellation of contracts or delivery failure. Information on costs and terms of delivery must be clear under transparency focus. In consequence, consumers should express their consent of payment firmly on their commitment to the transaction they are engaging, which should result in lower dispute resolution costs for business and consumer damage.¹¹

The hidden charges and costs of the goods and services offered on the internet shall be dictated firmly. “Cost traps” is the situation where consumers were tricked to pay a charge or cost for the “free” service from traders as an example of horoscope and recipes on the internet. This pre-contractual information shall protect consumer from this cost by reassuring that consumers understand and firmly acknowledge the payment condition of such services.¹² The disclosure of total cost of the products and services altogether with any extra fees shall be provided by traders. Shall there be such information indicated clearly on the website, consumers would not have to pay additionally for an extra cost or services.¹³

The information on right of withdrawal is one of the most important provisions specified by the Consumer Rights Directive as recital 37 suggests that in the case of selling at a distance, consumers is unable to see the goods before concluding the contract. Consumers shall then have the right to withdraw from the contract within 14 days

¹¹ Department for Business Innovation & Skills, “*Consultation on the implementation of the Consumer Rights Directive 2011/83/EU*”, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32690/12-999-consultation-implementation-of-consumer-rights-directive.pdf. (accessed on September 25, 2015)

¹² European Commission, “*Consumer Rights: 10 ways the new EU Consumer Rights Directive will give people stronger rights when they shop online*”, http://europa.eu/rapid/press-release_MEMO-11-450_en.htm?locale=en (accessed on September 1, 2016)

¹³ *Id.*

without the requirement of stating reason.¹⁴ However, when the right of withdrawal does not exist, traders have to provide information of the nonexistence of such right.

Trader has to provide the technical steps information involved when a consumer placing an order in order to make the consumers aware of their involvement in which process and their commitment at which point, respectively. Placing an order is also related to the contract formation. Therefore, it is important that traders should provide not only technical steps, but also legal implications relating to the process of contract formation. Even though consumers will be more familiar to the offline type of contract procedure, in this current situation, where most consumers are international and getting involved in the online business, this requirement is a new nature which is required by the supplier to provide this necessary information mentioned earlier.¹⁵ The identifying and correcting input errors¹⁶ which provide logical steps that ease customers to correct their errors along the way of their order shall also be provided before an order being placed.

The information requirements shall be accounted as a part of the contract. To prove that whether trader has provided pre-contractual, the burden of proof shall be on trader.¹⁷ As communication used is beyond the consumers' capability to control this medium, it is important to mention that the burden of proof maybe on traders.¹⁸

The European Union law imposes various information requirements, it also specifies the specific consequences when the following information is not complied by the trader 1) price and

¹⁴ Consumer Rights Directive, art.9(1)

¹⁵ Geraint G. Howells, et al., **“Information Rights and Obligations: A Challenge for Party Autonomy and Transactional Fairness”**, Ashgate (2005) p.104

¹⁶ E-commerce Directive, art.10(c)

¹⁷ Consumer Rights Directive, art.6(9)

¹⁸ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Recital 22

any additional charges; the consumer shall not be bound by the contract. 2) the right of withdrawal; the time to withdraw from the contract shall be extended and 3) the order implied an obligation to pay; the consumer shall not be bound by the contract. However, the European Union law usually leaves the duties on the remedies available for the consumers where there is any infringement of the information requirements to the Member States' internal law.¹⁹

In the United Kingdom laws, there was complexity of the law before the enactment of the Consumer Rights Act 2015. Recently, it is still not easy for parties to understand thoroughly and be clear about their rights and responsibilities, which leads to argumentations being costly for parties and obstructs consumers from exercising their rights. Thus, the remedies available for consumer are harmonized into one piece which is the Consumer Rights Act 2015.

The United Kingdom provide the consumer rights in accordance with the European Union law and impose additional remedies according to the Consumer Rights Directive which are 1) in case of the information regarding the main characteristics is not complied with, the right to enforce terms about goods and services are different depending on the statutory rights that are breached and the nature of goods and services. Under a goods contract; the consumer shall have Short term right to reject, right to repair or replacement, right to price reduction or final right to reject. Under a service contract, the consumer shall have the right to require repeat performance and the right to price reduction. 2) In case of the information other than the information regarding the main characteristics is not complied with; both goods and service contract, the consumer shall entitle the right to recover the costs incurred from the trader, up to the amount the consumer has paid. Beside from the stated remedies when the trader does not conform to the information requirements by not providing any information specified by law;

consumers could make a complaint about the contravention of this requirement to the concerned enforcement authority or the court.

From the legal basis of foreign laws, Thai law should propose the provision of pre-contractual information on e-commerce and also the consequences of non-compliance with the information requirement in an appropriate measure as follows:

1) By the virtue of section 28 of the Direct Sales and Direct Marketing Act B.E.2545, the Ministerial Regulation should be enacted in order to stipulate the specific information which shall be disclosed to the consumer as a pre-contractual information on e-commerce as follows: “Before the contract is concluded, the trader must provide the consumer of the following information: 1) the main characteristics of goods and service, 2) Identity of the trader, contact details such as telephone and fax numbers, e-mail address and geographical addresses, trade registration number, VAT number 3) the total price of the goods or service including taxes or if the prices cannot be precisely calculated in advance, the calculation method should be provided. 4) The right of withdrawal, if it exists or the non existence of the right of withdrawal, the conditions, time limit and process to exercise such right. 5) Details of the potential contract 6) Place and delivery procedure of the goods or service 7) the technical steps to proceed in order to conclude the contract. 8) The technical procedure, before an order has been placed, of the identifying and correcting input errors. 9) when placing the order is implied an obligation to pay the trader, it shall be labeled in a clearly and comprehensibly manner with the words “order with obligation to pay”.

2) Pre-contractual information in the aforementioned recommendation should form a part of the contract. Thus, the details contained in the sales of goods or service document should contain all pre-contractual information required in section 28 allowing the consumers to verify whether contractual information is in accordance with the pre-contractual information provided pre-purchase. If the

consumers find it is not in accordance thereof, they could exercise the right of withdrawal. In addition, the traders should provide such confirmation on a durable medium, such as e-mail, and SMS, where the information is stored, and it could be accessible in the future with an unchangeable information which is stored at the beginning in order to benefit the consumers of the potential problems after purchase. Thus, the information contained in the purchase and sell document stipulated in section 31 paragraph 2 of the Direct Sales and Direct Marketing Act B.E.2545 shall include “details under section 28”

3) In order to bring the aforementioned solution into practice, when the problems on pre-contractual information on e-commerce arise post-purchase, the burden of proof should be borne by the trader. Thus, section 29 of the Consumer Case Procedure Act B.E.2551 should be additionally included the following statement;

“As regards compliance of the requirements for pre-contractual information provided by the Direct Sales and Direct Marketing Act B.E.2545, the burden of proof shall be borne by the trader.”

In such case, where the fact cannot be proved by any other methods, if pre-contractual information is missing from the sales of goods or service document, trader will become more vulnerable in such situation unless he has provided the information on a durable medium before.

4) Thai law should stipulate the current remedies available in many laws into one piece of legislation in order to make it easier for consumer to pursue for legitimate remedies. In addition, the consumer rights of non-compliance of the trader with the information requirements should depend on the types of pre-contractual information as follows:

4.1) The main characteristics of the goods or services; in case when the trader act's does not comply with the pre-contractual information provided concerning the main characteristics of the goods, if the consumer does not mean to exercise the unilateral right to terminate the contract but remaining to receive the goods, the law should explicitly stipulates the right to replace the goods in case of the goods is not in line with the information provided pre-purchase in order to benefit the consumer interest.

4.2) Price; in the situation where the consumer declared an intention under a mistake as to the total cost. The trader should be responsible for any additional cost that he did not pre-contractually provide to the consumer by himself, thus, consumer should not be bound by the contract or order.

4.3) The Right of Withdrawal; in order to comply with the Royal Decree to be issued in accordance with section 33 paragraph 2 of the Direct Sales and Direct Marketing Act B.E.2545, the law should enact the consumer's right to be explicitly informed of the information concerning on the territory of their termination depending on each contract.

Moreover, if the information concerning the right of withdrawal has not been provided pre-contractually by the trader, the duration to exercise the right of withdrawal should be extended as prescribed in the European Union Directive or the United Kingdom law, according to a study in chapter 3.

4.4) Information concerning Details of the contract other than the main characteristics ;Thai law should endorse the consumer's right from the non-compliant and inaccurate information to recover either the cost or upto the full amount of value at the time consumers had purchased.

Reference

Books

English

Geraint Howells, Andre Janssen and Reiner Schulze. **“Information Rights and Obligations”**, Ashgate Publishing Limited, 2005.

Thai

กิตติศักดิ์ ปรกติ, “ผลงานวิจัย เรื่อง ความรับผิดชอบสำหรับผู้บริโภคในสัญญาซื้อขาย”, [กรุงเทพฯ]:

โครงการวิจัยเสริมหลักสูตร มหาวิทยาลัยธรรมศาสตร์, 2532. (Kittisak Prokati, **“Liability for Defects in Sales Contract”**, Curriculum research project Thammasat University (1989)

ดารารพ ธีระวัฒน์. “รายงานวิจัยฉบับสมบูรณ์ เรื่องสัญญาผู้บริโภค วิเคราะห์เปรียบเทียบหลักเกณฑ์ การคุ้มครองผู้บริโภคด้านสัญญาของต่างประเทศและของไทย”, ศูนย์วิจัยและให้คำปรึกษาคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2557. (Daraporn Thirawat, **“The Full Report of the Consumer Contract: The Comparative Analysis of the Consumer Protection regarding Contracts between Foreign Countries and Thailand”**, Research and Consultancy Institute (2014)

ศันสน์ทกรณ (จำปี)โสทธิพันธุ์.. “คำอธิบายนิติกรรมสัญญา”, 12 ed., 2550. (Sanankorn (Jampee) Sothipun, **“Juristic Acts and Contracts”**, Winyuchon (2007)

Article

พลอย, เจริญสม. “การขายตามคำพรรณนา” [กรุงเทพฯ]: คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2551.

(Ploy Charoensom, **“Sales by Description”**)

Electronic Media

Department for Business Innovation & Skills, "*Consultation on the Implementation Of the Consumer Rights Directive 2011/83/Eu* "

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32690/12-999-consultation-implementation-of-consumer-rights-directive.pdf.

European Commission, "*Consumer Rights: 10 Ways the New Eu Consumer Rights Directive Will Give People Stronger Rights When They Shop Online*" http://europa.eu/rapid/press-release_MEMO-11-450_en.htm?locale=en.

European Commission, DG internal Market and Services Unit E2, "*Study on the Economic Impact of the Electronic Commerce Directive, Final Report*" http://ec.europa.eu/internal_market/e-commerce/docs/study/ecd/%20final%20report_070907.pdf

European Commission, "*EU cloud computing expert group: discussion paper pre- contractual information requirements and cloud services*",

http://ec.europa.eu/justice/contract/files/expert_groups/discussion_paper_pci_en.pdf

Giesela Ruhl, "*Consumer Protection in Choice of Law*"

<http://www.lawschool.cornell.edu/research/ilj/upload/ruhl-final.pdf>