

**PROBLEMS OF CONSUMER PROTECTION RELATING TO
TRADEMARK LAW: A CASE STUDY IN REGARD TO
USAGE OF UNFAIR METHOD TO CAUSE
CONFUSION ON AUTHENTICITY OF
TRADEMARK OWNERSHIP ***

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ABSTRACT

At present, some business operators use dishonest methods to run their businesses. For example, they imitate trademarks or packaging of other businesses in order to use well-known trademarks and confuse the consumer. In some cases, trademark law may not give sufficient protection of the consumer's interests. Some business operators have registered or changed the juristic person's name by using the trademark of others without the permission of the trademark owner, or have used part of another's trademark as their own. This causes confusion to the consumer who may think that the trademark owner and such juristic person are the same or an affiliated company. The consumer may buy products or receive services from the juristic person who is using another's trademark because they rely on the quality of the real trademark owner. This causes damage to the consumer who does not receive the products or services from the real trademark owner, and the product or service from the business operator who is not the real trademark owner may not have been of an equal quality to the product or service from the real trademark owner.

Under Thai law, there are many laws which are intended to protect the consumer. However, in the case that the business operator has registered or changed its juristic person's name by using the trademark of others or part of it without permission and causes confusion to the consumer, the consumer does not receive proper protection under Thai law.

Under international law, there is an unfair competition principle in the Paris Convention. Any act of competition contrary to honest practices such as causing confusion, discrediting competitors

and misleading the public is prohibited under international law. The act of some business operators above can be considered as unfair competition.

Since the present Thai law may not apply to protect the consumer who confused on authenticity of trademark ownership, in order to resolve this problem, the article proposes that the legislature should enact a new special statute covering unfair competition.

The unfair competition law should set out the acts that will be considered as unfair competition and include the acts which causes the consumers to confuse on authenticity of trademark owner for giving the protection to the consumer.

Keywords: Unfair Competition, Consumer Protection, Trademark, Passing off

บทคัดย่อ

ในปัจจุบันมีผู้ประกอบการบางรายใช้วิธีที่ไม่สุจริตในการดำเนินกิจการยกตัวอย่างเช่นเลียนแบบเครื่องหมายการค้าหรือบรรจุภัณฑ์ของผู้ประกอบการรายอื่นเพื่ออาศัยความนิยมของเจ้าของเครื่องหมายการค้าและทำให้ผู้บริโภคเกิดความสับสน ในบางกรณีกฎหมายเครื่องหมายการค้าไม่อาจให้ความคุ้มครองที่เพียงพอแก่ผู้บริโภค มีผู้ประกอบการบางรายอาศัยวิธีการจดทะเบียนหรือเปลี่ยนชื่อของนิติบุคคลของตนเองโดยใช้คำในเครื่องหมายการค้าของผู้อื่นโดยไม่ได้รับอนุญาตจากเจ้าของเครื่องหมายการค้าหรือใช้บางส่วนของเครื่องหมายการค้าของผู้อื่นมาเป็นเครื่องหมายการค้าของตนเอง การกระทำดังกล่าวทำให้ผู้บริโภคเกิดความสับสนว่าเจ้าของเครื่องหมายการค้าและผู้ประกอบการเหล่านั้นเป็นบริษัทเดียวกันหรือบริษัทในเครือเดียวกันผู้บริโภคอาจซื้อสินค้าหรือรับบริการจากผู้ประกอบการที่ใช้เครื่องหมายการค้าของผู้อื่นเนื่องจากเชื่อมั่นในคุณภาพของเจ้าของเครื่องหมายการค้าที่แท้จริง เหตุการณ์

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ดังกล่าวก่อให้เกิดความเสียหายแก่ผู้บริโภคเนื่องจากทำให้ผู้บริโภคไม่ได้รับสินค้าหรือบริการจากเจ้าของเครื่องหมายการค้าที่แท้จริงและสินค้าหรือบริการจากผู้ประกอบการที่มีเจ้าของเครื่องหมายการค้าที่แท้จริงอาจมีคุณภาพไม่เท่ากับสินค้าหรือบริการของเจ้าของเครื่องหมายการค้าที่แท้จริง

มีกฎหมายไทยจำนวนมากที่มีจุดประสงค์ในการคุ้มครองผู้บริโภค แต่ในกรณีที่ผู้ประกอบการจดทะเบียนหรือเปลี่ยนชื่อนิติบุคคลของตนเองโดยใช้เครื่องหมายการค้าของผู้อื่นโดยไม่ได้รับอนุญาตหรือใช้บางส่วนของเครื่องหมายการค้าของผู้อื่นมาเป็นเครื่องหมายการค้าของตนเองซึ่งก่อให้เกิดความสับสนแก่ผู้บริโภคนั้น ผู้บริโภคไม่ได้รับการคุ้มครองที่เหมาะสมจากกฎหมายไทย

ภายใต้กฎหมายระหว่างประเทศมีหลักเกณฑ์เรื่องการแข่งขันที่ไม่เป็นธรรมระบุไว้ในสนธิสัญญากรุงปารีส การกระทำใดในการแข่งขันที่ขัดต่อการกระทำที่สุจริต เช่นการก่อให้เกิดความสับสน การทำให้คู่แข่งหมดความน่าเชื่อถือหรือการทำให้สาธารณชนเข้าใจผิดในสินค้าของตนนั้นจะถูกห้ามภายใต้กฎหมายระหว่างประเทศ การกระทำของผู้ประกอบการดังกล่าวข้างต้นพิจารณาได้ว่าเป็นการแข่งขันที่ไม่เป็นธรรม

เนื่องจากกฎหมายไทยในปัจจุบันไม่สามารถให้ความคุ้มครองผู้บริโภคในกรณีที่สับสนในความเป็นเจ้าของเครื่องหมายการค้าที่แท้จริงได้ ดังนั้นเพื่อแก้ไขปัญหาดังกล่าว บทความนี้จึงขอเสนอว่าฝ่ายนิติบัญญัติควรบัญญัติกฎหมายพิเศษสำหรับการป้องกันแข่งขันอันไม่เป็นธรรม

กฎหมายป้องกันการแข่งขันอันไม่เป็นธรรมควรระบุว่า การกระทำใดถือว่าเป็นการแข่งขันอันไม่เป็นธรรมและรวมการกระทำที่ก่อให้เกิดความสับสนในตัวเจ้าของเครื่องหมายการค้าเป็นการแข่งขันอันไม่เป็นธรรมด้วยเพื่อเป็นการให้ความคุ้มครองแก่ผู้บริโภค

คำสำคัญ: การแข่งขันอันไม่เป็นธรรม, การคุ้มครองผู้บริโภค, เครื่องหมายการค้า, การลวงขาย

INTRODUCTION

At present, some business operators use dishonest methods to run their businesses; they have registered or changed the juristic person's name by using the trademark of others without permission from the trademark owner, or have used part of another's trademark as their trademark. This confuses the consumer, who may think that the trademark owner and such juristic person are the same or an affiliated company. The consumer may buy products or receive services from the juristic person who is using the other's trademark because they rely on the quality of the real trademark owner. It

causes damage to the consumer who does not receive products or services from the real trademark owner, and the product or service from the business operator who is not the real trademark owner may not have been of an equal quality to the product or service from the real trademark owner.

Under Thai law, there are many laws which have the purpose of protecting consumers. The important Thai laws which have such a purpose are the Thai Consumer Protection Act B.E. 2522 and the Thai Trademark Act B.E. 2534. However, the consumer protection system in Thailand has a somewhat paternalistic nature which means that consumers may not be able to exercise their rights directly or take legal action by themselves. The consumer could not take legal action against the person who used the unfair methods causing their confusion about the authenticity of trademark ownership and could not claim for compensation.

This article will therefore study the principle of consumer protection, especially the unfair competition principle and the passing off principle in the foreign countries in order to analyze Thai laws. It proposes enactment of a new special statute in order to resolve the problem that Thai laws do not protect the interests of the consumers mentioned above.

THE UNFAIR COMPETITION PROTECTION UNDER INTERNATIONAL LAW

The main source of unfair competition law at international law level can be found in the Paris Convention for the Protection of Industrial Property (hereinafter the Paris Convention). It has the objective to protect industrial intellectual property. The word industrial property is defined in article 1(2) of the Paris Convention as consisting of patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition. Some intellectual properties in the definition of the word industrial property

are not industrial property by nature, but are industrial property by negotiation during the drafting of the Paris Convention.¹

The unfair competition principle in the Paris Convention was adopted by the Revision Conference of Brussels in 1900; it was specified in article 10 *bis*:

Article 10 *bis*

(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(3) The following in particular shall be prohibited:

(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

According to article 10 *bis* (2) of the Paris Convention, unfair competition consists of ‘any act of competition contrary to honest practices’. There is no clear definition of the words ‘honest practices’ in the convention. It will be the duty of the court or

¹ Bodenhausen, G.H.C., *Guide to the Application of the Paris Convention for the protection of industrial property as revised at Stockholm in 1967*, (Geneva: WIPO, 1997), 23.

legislation process in each country to apply the word honest practices in their country. This is because the meaning of honest practices is flexible. The criteria of ‘fairness’ or ‘honesty’ in competition depend on the reflection of the sociological, economic, moral and ethical concepts of a society. This will be different in each country and sometimes even within one country. The criteria of honest practices change with time. Moreover, there are always new acts of unfair competition occurring, because there is apparently no limit to inventiveness in the field of competition.²

According to article 10 *bis* (3) of the Paris Convention, there are examples of the acts which are considered to be unfair competition. There are three types: causing confusion, discrediting competitors and misleading the public. The common aspect of these important examples of unfair competition is the attempt by the business operator to succeed in business without using his own achievements in terms of price and the quality of his products, but by taking undue advantage of the work of another or by influencing consumer demand with false or misleading statements.³

THE UNFAIR COMPETITION PROTECTION UNDER THE LAW OF FOREIGN COUNTRIES

The nature of law against unfair competition in each country is different. This is because the nature and form of unfair competition occurring in each country is different. Therefore, the international treaty does not give a clear definition of the word unfair competition and lets each country give its own definition and legal process, according to the situation and nature of unfair competition in that country.

The protection against unfair competition in each country can be divided in three groups as follows.⁴

² WIPO, “Protection against Unfair Competition Analysis of the Present World situation,” (Geneva, 1994), 23.

³ *Id.*, at 24.

⁴ นลินธร ชาตศิริ, “การกระทำอันเป็นการแข่งขันอันไม่เป็นธรรมทางการค้าและสภาพบังคับตามกฎหมาย : ศึกษากรณีเฉพาะทรัพย์สินอุตสาหกรรม”, วิทยานิพนธ์มหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2539, 49-50. (Nalinthorn Chartsiri. “Unfair Competition and Legal Sanctions: A Case

1. The protection against unfair competition by special statutes

In some countries, the legislature has enacted a special statute to prevent unfair competition, such as Japan, Korea, Denmark, Bulgaria, Canada, Sweden and Switzerland. Some countries will apply a special statute or special law together with general law in order to prevent unfair competition. General law will have general provisions which relate to the protection against unfair competition and have a means of law enforcement, especially civil enforcement. The special statute will provide the detail of general law.

2. The protection against unfair competition by tort law and/or the passing off principle and the trade secret principle

Countries which use a civil law system will prevent unfair competition by tort law and countries which use a common law system will use the passing off principle and the trade secret principle developed by court judgments. Examples of the countries which use tort law to prevent unfair competition are France, Italy and the Netherlands. In contrast, the English legal system uses the passing off and trade secret principles to prevent unfair competition.

3. The protection against unfair competition by special statutes together with tort law and/or the passing off principle and trade secret principle

Some countries prevent unfair competition by using their Civil Code, court judgments and special statutes. In a country which uses a federal state system, the segregation of federal law and state law causes a difference in protection against unfair competition and makes it more complicated. Federal law against unfair competition will not apply in a case which is under the jurisdiction of the state court. The protection against unfair competition in each state may be more complicated and more developed than federal law. An

example of a country which uses this system is the United States of America.

In the United States, the legal basis of unfair competition and consumer protection law contains a variety of federal and state statutes, common law doctrines, and the judicial decisions that interpret those statutes and doctrines. Unfair competition in the United States is related to intellectual property doctrines such as trademarks and trade secrets. It is also related to torts. An infringement of an intellectual property right is considered to be a tort. There is no general clause against unfair competition, as unfair competition law in the United States includes many doctrines from common law and statutes of many jurisdictions.⁵

PASSING OFF

Passing off is the legal principle in a common law system which was developed for protection against unfair competition in a free trade market. There is evidence of the concept in English court judgments since the 17th century. In English law, there is no unfair competition law, however, it is claimed that the passing off law principle has the same effect of protection as the unfair competition law.⁶

The general rule governing passing off is that no trader may conduct his business so as to lead customers to mistake his goods, or his business, for the goods or business of someone else.⁷ Therefore, it can be said that the passing off in trademark law means one trader uses the trademark of another on his products, in

⁵ Frauke Henning-Bodewig, *International Handbook on Unfair Competition* (Munich: C.H. Beck, 2013), 622-623.

⁶ วิชัย อริยานันทกะ, “ข้อสังเกตบางประการเกี่ยวกับกฎหมายเครื่องหมายการค้าและการป้องกันการแข่งขันที่ไม่เป็นธรรม (1),” *บทบัญญัติ (เนติบัณฑิตยสภา)* 58, (2545): 133. (Vichai Ariyanuntaka, “Some Notices relating to Trademark Law and the Protection against Unfair Competition (1),” *Bot Bundit (Thai Barrister)* 58, (2002): 133).

⁷ Robin Jacob, and Barrister Alexander Daniel, *A Guidebook to Intellectual Property: Patents, Trade Marks, Copyright, and Designs*, 4th ed. (London: Sweet & Maxwell, 1993), 107.

order to sell them by causing confusion to consumers who think that such products belong to the trademark owner. The passing off principle has the same foundation as trademark law, which is considered to be one of a wrongful act. The important thing which the law relating to the passing off protects is the ‘goodwill’ in a business. The owner of goodwill in a business should receive protection from the law.⁸ The main point about passing off is that goodwill has been established by one trader and another trader tries to take advantage of that goodwill, to exploit it to the detriment of the first trader.⁹

In 1990, there was the case of *Reckitt & Colman Ltd v Borden Inc*¹⁰ also known as the *Jiff Lemon Case*. This case is a leading decision of the House of Lords on the tort of passing off. The facts in the case were that the plaintiff sold lemon juice in a yellow plastic bottle which had the colour and shape of an actual lemon. The defendant produced lemon juice contained in a plastic bottle like the plaintiff’s, but the defendant’s bottle was larger than the plaintiff’s and had a flattened side. It made the consumers confused that the products of the defendant were the products of the plaintiff. The defendant therefore was prohibited from using such a plastic bottle. The court held that the defendant was guilty of passing off.

Lord Oliver laid down the essentials for a passing off action, derived from this case as follows:¹¹

- (a) the existence of the claimant’s goodwill
- (b) a misrepresentation as to the goods or services offered by the defendant
- (c) damage (or likely damage) to the claimant’s goodwill as a result of the defendant’s misrepresentation.

⁸ พงษ์เดช วานิชกิตติกุณ, “ปัญหาบางประการเกี่ยวกับการลวงขาย,” บทพิมพ์คดี (เนติบัณฑิตยสภา) 56, (2543): 94 (Pongdeat Wanitkittikhun, “Some Problem Issues Relating to Passing Off,” *Bot Bundit (Thai Barrister)* 56, (2000): 94).

⁹ David I. Bainbridge, *Intellectual Property*, 6thed. (Harlow England: Person Longman, 2007), 726.

¹⁰ *Reckitt & Colman Ltd v Borden Inc* [1990] 1 All E.R. 873.

¹¹ Bainbridge, *supra* note 9, at 728.

THE PRINCIPLE OF CONSUMER PROTECTION UNDER THAI LAW

According to Thai law, there are approximately fifty laws which have the objective of protecting the consumer, although some Acts protect the consumer indirectly. In such Acts, the government or administrative section will be the person who exercises the right and the private individual will not be the directly injured person. However, at present there is the Thai Consumer Protection Act B.E. 2522 which protects the consumer directly.¹²

According to section 4 of the Thai Consumer Protection Act, the consumer has five rights of protection as follows:

- (1) The right to receive correct and sufficient information and description as to the quality of goods or services
- (2) The right to enjoy freedom in the choice of goods or services
- (3) The right to expect safety in the use of goods or services
- (4) The right to receive a fair contract
- (5) The right to have the injury considered and compensated in accordance with the laws on such matters or with the provision of the Consumer Protection Act

The other important law which has the purpose to protect consumer is trademark law. Trademark has two main purposes; the first purpose is to protect business reputation and goodwill by considering that a registered trademark is a property. The second purpose is to protect consumers from deception, and to prevent consumers from buying inferior products or services by mistaken belief that they originate from or are provided by another

¹² สุขุม สุกนิษฐ์, *คำอธิบายกฎหมายคุ้มครองผู้บริโภค*, พิมพ์ครั้งที่ 9 (กรุงเทพฯ: สำนักพิมพ์แห่งจุฬาลงกรณ์มหาวิทยาลัย, 2557), 145. (Susom Supphanit, *Textbook on Consumer Protection Law*, 9th ed. (Bangkok: Chulalongkorn University Publishing House, 2014), 145.

business operator.¹³ The consumer also has an interest from trademark law. They associate the products or services and their quality with the associated brand name or logo and will not wish to be confused by similar names or logos placed on different products. The protection under trademark law on the origin of products also gives the benefit to consumer interests. It can guide consumers in the exercise of choice.¹⁴

The protection of the trademark owner's right from people who infringe the trademark also protects the consumer's right. This is because when the trademark owner can take legal action against people who infringe the trademark, the confusion of the consumer about products from different sources which use the same trademark will be eliminated. Therefore, the clear main purpose of trademark law is to protect the interests of trademark owners and consumers in one product market.¹⁵

Therefore, it can be said that trademark law is important, not only for trademark owners, but also for consumers, because from the function of trademark, consumers can distinguish the products or services of one business operator from others. Consumers can depend that products under the same trademark come from the same origin or manufacturer. Moreover, products under same trademark should have same quality. It helps consumers to choose the product having quality and to avoid others. It provides protection to consumers to receive products and services from the manufacturers which they rely on.

ANALYSIS OF THE PROBLEM UNDER THAI LAWS

According to problem mentioned above, some consumers were confused that the trademark owner and the business operator who registered or changed the juristic person's name by using the

¹³ Bainbridge, *supra* note 9, at 585.

¹⁴ Paul Torremans, *Holyoak & Torremans Intellectual Property Law*, 7thed. (Oxford: Oxford University Press, 2013), 433.

¹⁵ ชัชชัย สุกผลศิริ, *คำอธิบายกฎหมาย เครื่องหมายการค้า* (กรุงเทพฯ: สำนักพิมพ์นิติธรรม, 2536), 6-7 (Tatchai Supaponsiri, *Textbook on Trademark Law* (Bangkok: Nititham Publishing House, 1993), 6-7).

trademark of others without permission from the trademark owner, or have used part of another's trademark as their trademark (the "Offender") were the same juristic person or affiliated company. Some consumers entered into a contract with the Offender on a misunderstanding. It caused damage to the consumers because they did not receive the product or service from the company they wished, and the product or service from the Offender may not have been of an equal quality to the product or service from the trademark owner.

In relation to the rights of consumers under the Thai Consumer Protection Act B.E. 2522, the acts of the Offender which run their business or advertise their business by using the trademark of others, can be considered to be advertisement according to the definition of the word advertisement in section 3 of the Consumer Protection Act B.E. 2522.¹⁶ Therefore, the consumer's protection which relates to the problem is consumer protection against advertising.

According to section 22 of the Consumer Protection Act B.E. 2522,¹⁷ the act of the Offender may be considered as an advertisement which contains a statement which is unfair to consumers. Using the part of another's trademark as their trademark may be considered to be a statement causing misunderstanding of the essential elements concerning services, because the consumer may

¹⁶ **Section 3** ... "Advertisement" includes any act which, by whatever means, causes the statement to be seen or known by an ordinary person for trading purposes...

¹⁷ **Section 22.** An advertisement may not contain a statement which is unfair to consumers or which may cause adverse effect to the society as a whole; that is, notwithstanding such statement concerns with the origin, condition, quality or description of goods or services as well as the delivery, procurement or use of goods or services.

The following statements shall be regarded as those which are unfair to consumers or may cause adverse effect to the society as a whole:

(1) Statement which is false or exaggerated;

(2) Statement which will cause misunderstanding in the essential elements concerning goods or services, notwithstanding it is based on or refers to any technical report, statistics or anything which is false or exaggerated;...

confuse the product of the offender with the product of the trademark owner. However, the Committee on Advertisement may consider that section 22(2) does not apply to the Offender's act because in practice, when consumers entered into contracts or received services from the Offender, they received information from the Offender's officer before entering into the contracts. Therefore, it may be considered that the consumers had already received the protection (true and fair information from the Offender) before receiving the services and had not suffered any damage from the contract, service or advertisement of the Offender.

If the Committee on Advertisement opines that the Offender's advertisement violates section 22, the Committee shall have the power to issue one or several orders as per section 27.¹⁸ Pursuant to section 27(4), in order to resolve the problem, the Committee on Advertisement may issue an order to correct consumers' misunderstanding by ordering the defendants to advertise that their service or business does not concern or relate to the plaintiff. However, the problem of this section is that the issuance of an order must be in accordance with the rules and procedure prescribed by the Committee on Advertisement, however, at present it has not yet issued such rules and procedure. Therefore, at present

¹⁸ **Section 27** In the case where the Committee on Advertisement is of the opinion that any advertisement violates section 22, section 23, section 24 (1) or section 25, the Committee on Advertisement shall have the power to issue one or several of the following orders:

- (1) to rectify the statement of method of advertisement;
- (2) to prohibit the use of certain statements as appeared in the advertisement;
- (3) to prohibit the advertisement or the use of such method for advertisement
- (4) to correct by advertisement the possible misunderstanding of the consumers in accordance with the rules and procedure prescribed by the Committee on Advertisement.

In issuing an order under (4), the Committee on Advertisement shall prescribe the rules and procedure by having regard to the interest of the consumers and to the bona fide act of the advertiser.

the Committee on Advertisement cannot exercise the power under section 27(4).

Moreover, where the Committee on Advertisement has already issued the rules and procedure of issuance of the order according to section 27(4), in practice, a problem may occur as to whether the Committee would exercise such power to order the defendant to correct misunderstanding by advertisement or not, as by imposing such an order to the defendant, which is the most severe penalty under section 27, means that the defendant has to accept that its advertisement is incorrect. In addition, issuance of such an order according to section 27(4) may result in civil, criminal or administrative liability to the Committee on Advertisement.

With regard to the rights of the consumer under trademark law, the law protects the interest of the trademark owner and provides them with a right to file a lawsuit against a person who infringes their trademark. However, the consumer does not receive protection directly from this law. Therefore, consumers who were confused between the service of the plaintiff and the defendant cannot directly issue a lawsuit against the person who infringes the trademark under the Thai Trademark Act.

CONCLUSIONS AND RECOMMENDATIONS

The act of some business operators which registered or changed the juristic person's name by using the trademark of others without permission from the trademark owner, or have used part of another's trademark as their trademark can be considered as unfair competition. It is because it causes the confusion to the consumer. Such act confuses the consumer, who may think that the trademark owner and such a juristic person are the same or an affiliated company. The consumer may buy products or receive services from the juristic person who is using the other's trademark because they rely on the quality of the real trademark owner. It causes damage to the consumer who does not receive products or services from the real trademark owner.

According to the problems, the consumer who confused on authenticity of trademark ownership does not receive the proper

protection under Thai law. The author would like to propose some recommendations as follows.

1 Proposing the Enactment of a New Special Statute

At present, Thai law may not protect the consumer and provide a fair remedy. The consumer cannot file a complaint by themselves. The author is of the opinion that to adjust the existing law within some section of each act to give consumers the right to file a complaint may distort or affect the main purpose of the whole Act. For example, the main purpose of the Trademark Act is to give protection to the trademark owner. The protection of the consumer under trademark law is the effect from the protection of the trademark owner only. Therefore, if we adjust or add some sections to give more rights to the consumer it will affect other sections and the main purpose of the whole Act.

Moreover, in the case where the legislature enacts a new special statute to resolve the problem, it will be easy for the lawyer to apply and interpret the law because the new special law will have as its main purpose to prevent unfair methods. In the future, if there are other acts which cause a similar problem, it will be easy for the legislature to amend or adjust the law.

Therefore, the author proposes the enactment of a new special statute covering unfair competition. This is because the act of the Offender is considered to be causing confusion to the public. Causing confusion is an example of unfair competition under article 10 *bis* (3)(iii) of the Paris Convention.

Some existing Thai laws do not give a consumer the right to file a complaint against a business operator who has caused confusion to the public. The author is of the opinion that Thai unfair competition law should give this right to a consumer who suffers damage from an act of unfair competition. Consumers would have direct protection if they were able to file a lawsuit with the court themselves.

Thai unfair competition law should provide a general provision which relates to the protection against unfair competition and is enforceable like article 10 *bis* (2) of the Paris Convention. The

author considers that the words provided in the general provision should be flexible, because the act of unfair competition will change with time. In the future, new acts of unfair competition may occur. Therefore, a flexible wording in the general provisions of unfair competition law will provide the opportunity for the court to use its discretion to interpret the acts that should be considered as unfair competition.

Moreover, the author's view is that Thai unfair competition law should specify examples of some acts which are considered to be unfair competition like article 10 *bis* (3) of the Paris Convention. Examples will clearly indicate what type of act will be considered as unfair competition. It will help the court to apply the law and interpret whether some act will be considered as unfair competition or not. It will also clearly warn all business operators not to commit the prohibited acts. The examples of unfair competition should include those acts by a manufacturer or business operator which cause confusion on authenticity of trademark ownership.

2. Proposing the Establishment of New Organization

Unfair competition law and consumer protection relates to many laws, i.e. intellectual property law, consumer protection law and competition law. However, according to the present Thai law, the government authority or commissions who control or use the power of each law are separate. Under trademark law, the authority is the Department of Intellectual Property. Under consumer protection law, the authority is the Office of the Consumer Protection Board, and under competition law, the authority is the Office of the Thai Trade Competition Commission. Therefore, the author considers that to improve the prevention of unfair competition effectively, the authority of each law should be coordinated. The author proposes the establishment of one organisation which has the authority to control and exercise the powers relating to every law in order to protect and balance the interests of business operators and consumers. An example of such an organisation is the Federal Trade Commission (FTC) of the United States of America, which has the

authority to control and exercise the powers under intellectual property law, competition law and consumer protection law. The FTC's main mission is to protect consumers and promote competition in the market. If there is an organisation which has the power to take care of all aspects related to consumer protection, the consumer protection under Thai law will be more effective.

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