

CONSUMER PROTECTION ON FACEBOOK LIVE SALES*

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Received 8 August 19

Revised 11 October 19

Accepted 11 December 19

Abstract

Online sales are activities through interactive channels of communication, connecting with users all around the world. The sales on the social network are widely popular as a device for communication with customers. In Thailand, one of the most prominent social networks among people is Facebook. To this end, We Are Social, the digital agency of the United Kingdom, has revealed that Thailand ranked 8th in term of Facebook use in 2018, and Bangkok, the capital of Thailand, ranked 1st in the category of city. In 2016, Facebook launched a live streaming function, called Facebook Live. This function is very powerful since the users can share their feeling, information, or merchandise in the form of live show through this function. As a result, Facebook Live has also effectively become a channel for commercial activities. This is suitable for lifestyles of Thai people, who live in big cities and use Facebook during their leisure.

The online activities make everything for people more convenient than in the past. This is because they do not need to deal with a traffic jam when going out for shopping etc. The method of selling via Facebook Live is simple. To clarify, the seller just turns on the live streaming

* This article is summarized and rearranged from the thesis “Consumer Protection on Facebook Live Sales” The Master of Laws Program in Business Laws (English Program), Faculty of Law, Thammasat University, 2018

function, allowing any Facebook users to watch his/her commercial activities. In this regard, the users who are interested in the products can immediately purchase such products during the live show.

The payment for products is mostly made by transferring directly to the sellers. Once the sellers receive a notice of payment, they will deliver an ordered product to the buyers via post or a logistics company.

However, in many occasions the buyers do not receive the goods they have ordered or the goods have a defect. Once such problems occur, it is difficult for the buyers to contact the seller in order to seek a refund or reimbursement since Facebook does not require any personal information of the user such as house registration number and identity card number in the process of registration.

These days, Thailand has two general laws aiming to protect a consumer, namely Consumer Protection Act 2522 and Direct Sales and Direct Marketing Act B.E. 2545 (3rd amended, B.E. 2560). Nonetheless, the scopes of protection under these two laws are insufficient to protect a consumer in the case of Facebook Live sales.

The author then has thus studied in order to solve this problem by bringing foreign laws namely: United Kingdom Laws and Singapore Laws for analyzing and comparing. In this respect, the author finds that the Thai existing consumer laws especially Direct Marketing Act B.E. 2545 (3rd amended, B.E. 2560) do not cover the protection of a consumer in the case of Facebook Live sales. Therefore, the amendments should be made.

Keywords: E-Commerce, Facebook Live Sales, Consumer Protection

1. Introduction

Online sales have become widespread in Thailand. The report from the Electronic Transaction Development Agency (Public Organization) of Thailand or ETDA indicated that the value of E-commerce in Thailand has risen every year since 2014.¹

ETDA further revealed that during 2015 – 2016, approximately 30 million of the Thai population are able to access the internet and 50% of those have experience in online shopping. The rate of this type of shopping growths increased to 19% in 2016.²

ETDA also disclosed that Thai people are fond of using online social media such as YouTube, Facebook, Twitter, Instagram, for communicating with others as well as sharing their stories, photos, and videos. More specifically, Thai people spend around 3 hours and 30 minutes a day using Facebook. As for YouTube, people use this channel to watch movie, video, live streaming of concerts or sports averagely for 2 hours and 35 minutes a day.³ Overall, Thailand ranked 1st in terms of internet users in such year.

Considering the social network, Thailand ranked 8th in terms of Facebook use in 2018. Bangkok, the capital of Thailand, ranked 1st in category of city.⁴

¹ Electronic Transactions Development Agency, 'Value of e-Commerce Survey in Thailand 2017' (ETDA, 27 September 2017) <<https://www.eta.or.th/publishing-detail/value-of-e-commerce-survey-2017.html>> accessed 25 September 2018

² Electronic Transactions Development Agency 'Thailand Internet User Profile 2017' (ETDA, 29 September 2017) <<https://www.eta.or.th/content/thailand-internet-user-profile-2017.html>> accessed 25 September 2018

³ Electronic Transactions Development Agency, 'Thailand Internet User Profile 2018' (ETDA, 25 July 2018) <<https://www.eta.or.th/content/eta-reveals-thailand-internet-user-profile-2018.html>> accessed 25 September 2018

⁴ Simon Kemp, 'We Are Social Ltd, Digital in 2018: World's Internet Users Pass the 4 Billion Mark' (We Are Social Ltd., 30 January 2018) <<https://wearesocial.com/uk/blog/2018/01/global-digital-report-2018>> accessed 26 September 2018

Continually, Facebook has developed many of its functions. In 2016, it launched a live streaming function, Facebook Live. Merchants use this live channel to sell items such as clothing and beauty accessories, etc. directly to their customers.⁵

During the live show, the seller usually displays the goods and provides brief information regarding the type of goods, brand, quality, size, and price. Any Facebook users can watch the show and purchase the products they are interested in during the show.

In general, the buyer will transfer the money to the seller's bank account. However, there is another channel providing payment system for ordered goods such as internet banking, mobile application, and prompt pay system, etc.

After receiving the notice of payment, the seller will deliver goods to the buyer mainly through the service of Thai Post Office or other shipping companies such as Kerry Express.⁶

Facebook Live sale is a type of E-Commerce. The purchasing process is concluded electronically and the payment transaction is via electronic channels. However, there are always several problems frequently occurring in the case of online sales including sales via Facebook Live.

EDTA has exposed that in Thailand, the number of consumer's complaints regarding online sales during 1st January 2018 to January 2019 rose to 17,558. To this end, the problems in relation to online sales can be categorized as follows:

1. The buyers are confused about the process of filing a complaint.
2. Consumer has concern over the creditability of the online seller.
3. The buyer does not receive the purchased goods.

⁵ Greg Swan, 'Facebook Live Video Shopping Being Tested In Thailand' (*Tinuiti*, 19 December 2018) <<https://www.cpcstrategy.com/blog/2018/12/facebook-live-video-shopping/>> accessed 28 June 2019

⁶ Kerry Express Thailand, 'Our Pride' (*Kerry*) <<https://th.kerryexpress.com/en/home/>> accessed 7 July 2019

4. The buyer receives the goods differently from the ordered.

When there is a problem as to Facebook online sales, it is difficult for the buyer to contact the Facebook Lives seller as Facebook does not require any personal information such as house registration, ID card number or even mobile phone number for the registration. In other words, anyone can create a Facebook account by using fake information.

Thailand currently has general laws intended to protect a consumer, namely Consumer Protection Act 2522 and Direct Sales and Direct Marketing Act B.E. 2545 (3rd amended, B.E. 2560).

The scope of the consumer protection under the Direct Sales and Direct Marketing Act B.E. 2545 (3rd amended 2560) covers consumers for distance selling and online sales only in such the cases as sales on the website.⁷

Thus, there is no protection for the consumers in the case of Facebook Live sales.

2. Overview of Facebook Live Sales

Facebook Live sales is considered to be E-Commerce in the category of Consumer to Consumer (C2C). It is also called Social Commerce due to that Facebook is a social network.

Any Facebook users can use their Facebook account to sell goods or provide services by relying only on the live streaming function. During the live shows, the sellers are able to displays the products and give their brief information regarding the goods.

⁷ Direct Sales and Direct Marketing Act, 3rd Amendment B.E. 2560 (2017)

“direct marketing” means marketing of goods or services in the manner of communication of information in order to directly offer goods or services to consumers who are at a distance, with the aim of receiving a response by each customer to purchase the goods or services from such direct market operator, while sales of goods or services via the electronic commerce method, which is not deemed as marketing, shall be subject to rules and conditions prescribed in Ministerial Regulations”

Once interested in a product, the buyers can purchase such a product during the live show and make a payment through the channel informed by the seller. The purchased goods will be delivered to the buyers soon afterward.

3. Problems Relating to Consumer Protection for Facebook Live Sales under Thai Laws

3.1 Problems Regarding the Definition of “Direct Marketing” under Thai Laws

The definition of “direct marketing” has been defined under the Direct Sale and Direct Marketing Act B.E. 2545 (amended B.E 2560) as follows:

“Direct Marketing means marketing of goods or services in the manner of communication of information in order to directly offer goods or services to consumers who are at a distance, with the aim of receiving a response by each customer to purchase the goods or services from such direct market operator, while sales of goods or services via the electronic commerce method, which is not deemed as marketing, shall be subject to rules and conditions prescribed in Ministerial Regulations”

After interpreting the above definition, it seems that this definition aims to protect the consumer who has purchased the goods or services from direct marketing.

In this regard, the direct marketing is the type of marketing that market goods or services through communicating and offering goods or services directly to consumers who are at a distance, with the aim of receiving a response by each customer to purchase goods or services. The communication of information under this definition might be via the telephone, fax, or other devices that can be considered a distance communication.

When a consumer response to such an offer, the contract will be deemed executed immediately. The seller and the consumer are not able

to further negotiate. This means such contract is a completed sales contract.

However, according to the definition given under the Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560), some type of online sales such as sale via the website “JD Central” or www.jd.co.th, is protected.

Facebook Live sales is considered one of the social commerce. Moreover, the operator and the consumer can negotiate during the sales. Therefore, the consumer who has purchased goods from Facebook Live sales is not protected under the definition “direct marketing” of the Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560).⁸

3.2 Problems Regarding the Right to be Informed under Thai Laws

In Thailand, the right to be informed is stated in section 30⁹ and 31¹⁰ of the Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560).

⁸ Pairoj Artraksa, *Kham Athibai Kodmhai Kai Trong Lae Talad Bab Trong [Direct Sales and Direct Marketing]* (Nititham Publishing House 2017) 148 (ไพโรจน์ อารักษ์ษา, *คำอธิบายกฎหมายขายตรงและตลาดแบบตรง (สำนักพิมพ์นิติธรรม 2560)*) 148

⁹ Direct Marketing Act 2017 (n 7) s 30

“An independent distributor, a direct sale agent or a direct marketing businessman shall have the duty in delivering to the consumer the document concerning the purchase and sell of goods or service.

The direct marketing operator is responsible for documenting the purchase of goods or services and delivering to consumers along with products or services.

The document concerning purchase and sell under paragraph one shall contain a Thai language statement that is perceptible, indicating the name of the purchaser and of the seller, the date of purchase and the date of delivery of the goods or service, including the right of consumer to terminate the contract. The right to terminate the contract shall be printed in the alphabets that are conspicuous compared to the general statements.”

¹⁰ *ibid*, s 31

By such law, a direct marketing operator needs to prepare and provide documentation regarding sales of goods or services. In addition, the operator has to submit such a document to the consumer along with the goods or services.

The details in the document must contain essential information such as the details of goods/services, the method of payment, the place and the method to deliver goods/services, the cancellation of the contract, warranty and refund in case of defect. In practice, most of the sellers on Facebook Live do not comply with the above prescriptions.

In the United Kingdom, the consumer law states that before the buyers place their order, the trader must inform the buyers of the information related to goods/services including such the rights of consumer as the right to know the detail of goods or services, the right to terminate the contract, the right to be reimbursed, etc. Besides, the trader must ensure that the consumers acknowledge all the details before placing their order as well.¹¹

“The Board shall have the power to specify details of a document concerning purchase and sell of goods or service that adopts the method of direct sale or direct marketing, with emphasis on price of goods or service that are subject to the consumer is protected and type of goods or service.

The document concerning purchase and sell under paragraph one shall contain at least the following particulars:

- (1) details under section 30;*
- (2) scheduled time, place and method of payment of debt;*
- (3) place and method of delivery of goods or service;*
- (4) method for termination of the contract;*
- (5) method for returning of goods;*
- (6) warranty on goods;*
- (7) replacement of goods in case of its defect.*

The announcement prescribing details of a document concerning purchase and sell shall be published in the Government Gazette.”

¹¹ The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, s 13

3.3 Problems Regarding the Cancellation of a Contract under Thai Laws

Under Thai laws, Section 33 of Direct Sale and Direct Marketing Act B.E. 2545 (amended B.E 2560) provides that the consumer has the right to terminate the contract by submitting a notice within 7 days from the date of receiving the goods.¹²

In this regard, the termination under Section 33 is different from the one under the Thai Civil and Commercial Code in that the buyer under Section 33 does not need to provide a reason for termination.

The termination without giving a reason is specified only in Direct Sale and Direct Marketing Act B.E. 2545 (amended B.E 2560).¹³

In practice, however, it is very difficult for the consumer to submit a notice to the operator of Facebook Live sales in Thailand because the operator does not provide their personal information to the consumer. Thus, such problem should be solved by creating a special method of termination.

3.4 Problems Regarding the Reimbursement under Thai Laws

According to Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560), the seller has to reimburse the full amount to the

¹² Direct Marketing Act 2017 (n 7) s 33

In purchasing of goods or service from a direct sale or from a sale through direct marketing, a consumer shall have the right to terminate the contract by giving written notice of his intention to the direct sale businessman or the direct marketing businessman within seven days from the date of receipt of goods or service.

For the direct sale business, consumer may notify his intention to the relevant independent distributor or the relevant direct sale agent.

The provisions of paragraph one shall not apply to types, prices or kinds of goods or service prescribed in the Royal Decree.

¹³ Daraporn Thirawat, *Sanya Pu Boripok [Consumer Contract]* (Textbook and Teaching Material, Faculty of Law, Thammasat University 2016) 170 (ดาราพร ธีระวัฒน์, *สัญญาผู้บริโภค* (โครงการตำราและเอกสารประกอบการสอน คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 2559)) 170

consumer within 15 days from the date of receiving the notice of termination of the contract from the buyer.¹⁴

In such case, if the seller receives the notice but refuses to refund the consumer, the law provides that the seller shall pay to the consumer a penalty at the rate prescribed and announced by the law.¹⁵

However, even if the law states clearly regarding the penalty, it seems that the seller does not have any concerns as the penalty that might be imposed is usually too little due to the low price of goods sold. Additionally, in many cases, when such problems occur, some of the sellers delete their Facebook account. This gives rise to difficulties for the consumers to claim anything against the sellers.

4. Conclusion

According to the above analysis on the problems related to consumer protection in the case of Facebook Live sales, the study shows that under Thai laws, consumers are not protected.

The author then proposes to amend the definition of “direct marketing” under the Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560) in order to provide protection for a consumer in the case of Facebook Live sales.

In addition, with regard to identifications of a seller, the Direct Sale

¹⁴ Direct Marketing Act 2017 (n 7) s 36

Where a consumer exercises his right to terminate the contract under section 33, the independent distributor, the direct sale agent, the direct sale businessman or the direct marketing businessman shall refund the total sum that is paid by the consumer to purchase the goods or service within the period of fifteen days from the date of receipt of the notice of intention to terminate the contract.

If any independent distributor, any direct sale agent, any direct sale businessman or any direct marketing businessman fails to refund the total amount and within the period under paragraph one, such independent distributor, direct sale agent, direct sale businessman or direct marketing businessman shall pay to the consumer a penalty at the rate prescribed and announced by the Board.

¹⁵ Ibid.

and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560) should be amended by adding a provision requiring those who want to sell products in Thailand through online channels such as Facebook Live to register with the officials in order to acquire a license for sales.

Those who do not register with the official before commencing their sales on the Facebook Live must be imposed a criminal punishment. The Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560) should then be amended by adding the punishment clause for that. However, in the case of the foreigners operating sales on Facebook Live, Thailand should enact a specific regulation to control.

Regarding the reimbursement problems, the Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560) should be amended by providing that Facebook Live seller must provide a guarantee to the officials before commencing their sales via Facebook Live in order to protect consumers in the case of the reimbursement claims. In this regard, the process of providing guarantee should also be a part of registration.

From the above information, the author believes that Facebook Live sales is at present one of the most popular transactions in Thailand. Therefore, the Direct Sale and Direct Marketing Act B.E. 2545 (3rd amended B.E 2560) should be properly amended as pursuant to the author's proposal to protect the consumers.

In conclusion, while the popularity of Facebook Live sales has significantly increased, the amended Act will hopefully protect the consumers on Facebook Live sales once they face the problems. This will also make consumers more confident in making their decision to purchase the online goods or services, contributing to the better economy of Thailand.

Bibliography

Books and Book Articles

Artraksa P, *Kham Athibai Kodmhai Kai Trong Lae Talad Bab Trong* [Direct Sales and Direct Marketing] (Nititham Publishing House 2017) (ไพโรจน์ อัจรักษา, คำอธิบายกฎหมายขายตรงและตลาดแบบตรง (สำนักพิมพ์นิติธรรม 2560))

Thirawat D, *Sanya Pu Boripok* [Consumer Contract] (Textbook and Teaching Material, Faculty of Law, Thammasat University 2016) (ดาราดพร ธีระวัฒน์, สัญญาผู้บริโภค (โครงการตำราและเอกสารประกอบการสอน คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 2559))

Laws and Regulations

Direct Sales and Direct Marketing Act, 3rd Amendment B.E. 2560 (2017)

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulation 2013

Websites and Blogs

Electronic Transactions Development Agency ‘Thailand Internet User Profile 2017’ (ETDA, 29 September 2017) <<https://www.etcha.or.th/content/thailand-internet-user-profile-2017.html>> accessed 25 September 2018

Electronic Transactions Development Agency, ‘Thailand Internet User Profile 2018’ (ETDA, 25 July 2018) <<https://www.etcha.or.th/content/etcha-reveals-thailand-internet-user-profile-2018.html>> accessed 25 September 2018

Electronic Transactions Development Agency, ‘Value of e-Commerce Survey in Thailand 2017’ (ETDA, 27 September 2017) <<https://www.etcha.or.th/publishing-detail/value-of-e-commerce-survey-2017.html>> accessed 25 September 2018

Kemp S, 'We Are Social Ltd, Digital in 2018: World's Internet Users Pass the 4 Billion Mark' (*We Are Social Ltd.*, 30 January 2018) <<https://wearesocial.com/uk/blog/2018/01/global-digital-report-2018>> accessed 26 September 2018

Kerry Express Thailand, 'Our Pride' (*Kerry*) <<https://th.kerryexpress.com/en/home/>> accessed 7 July 2019

Swan G, 'Facebook Live Video Shopping Being Tested in Thailand' (*Tinuiti*, 19 December 2018) <<https://www.cpcstrategy.com/blog/2018/12/facebook-live-video-shopping/>> accessed 28 June 2019