

Knowing the law on E-Commerce

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Perhaps you (or your teenage children) have a flair for designing hip T-shirts that are coveted by friends, or you've decided that your calling in life is to design and sell crafted furniture made of local hardwoods. How should you reach your intended customers?



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On the streets of any major city in Thailand, you'll see a seemingly endless selection of goods being sold in both formal marketplaces such as shops and malls, and by informal vendors who line the pavements with their wares. While foot traffic can generate healthy revenue for your business, what if your ambitions extend to targeting a global customer base over the internet?

Today, we will look at the key legal considerations for your graduation from a weekend market vendor to a global entrepreneur.

E-commerce in Thailand is governed by the Electronic Transactions Act (ETA) and the Direct Sale and Direct Marketing Act (DSDMA), both of which were enacted in 2002. The laws apply to all commercial and civil transactions that use electronic means, except for certain contracts excluded by Royal Decree.

Their shared purpose is to facilitate the use of electronic technology for businesses by reducing ambiguity regarding the legality of electronic information.

When you buy a product from a physical store, the contractual formalities of offer and acceptance are relatively obvious and happen in real time, between real people, with real money (or a debit or credit card) and a receipt. But what about when you complete a transaction in the virtual world of the internet?

In the realm of e-commerce, an offer of sale and subsequent acceptance to purchase is also required to form a valid contract between parties, provided that applicable rules and regulations are also respected. An offer of sale can be little more than someone advertising a product on their website for sale at a certain price. Acceptance to purchase takes place at the point when the buyer enters their payment information, reviews the order, and clicks the "submit" button.

This is immediately followed by a confirmation of purchase page on the website (upon valid entry of your information and sufficient funds). Then, usually within minutes, a confirmation email is sent to the buyer outlining the items purchased, their price and delivery details. Although a confirmation email is not expressly required in either act, it is generally thought to be an implied requirement within the DSDMA.

Both laws provide a large degree of business freedom by allowing anyone who wants to create an online store for their products to do so; providing the products they plan to sell are legal.

All e-commerce businesses are required by law to register with the Ministry of Commerce. Also, if the business exists only online, without a physical location where customers can examine the products, then a direct marketing business registration is also required by the Consumer Protection Board.

Supervisory powers are granted to the Electronic Transaction Commission through the ETA. Those who fail to comply with the registration requirements could face up to a year in prison.

The Consumer Protection Act of 1979 also applies to electronic transactions. This is especially important when it comes to providing descriptions of the products you offer on your website. All consumers have the right to comprehensive product information, and falsification of the nature or quality of a product could be grounds for criminal prosecution. As regular readers might recall, this act was discussed in our article on buying a bicycle on the internet so we won't expand on it here.

Consumers are also protected under the Unfair Contract Term Act of 1997, which, as the name states, gives buyers the right to a fair contract when purchasing items either in person or online. E-business operators should note that in the event of any doubt, a standard form contract (including all general terms and conditions of sale) will be interpreted *contra proferentem*, meaning against the drafter and in favour of the consumer, who is presumed to be in the weaker position.

Likewise, anyone trying to sell counterfeit goods online could face prosecution under state intellectual property laws. Under the Copyright Act of 1994, the penalty for commercial copyright infringement is a fine of between 50,000 and 800,000 baht, and a jail term of between three months and four years.

Furthermore, if the copyright is held by a foreign national, offenders might also face extradition and further prosecution overseas. There are precedents where this has happened.

According to a recent study by Visa, thanks to its rigorous enforcement of the law and the imposition of penalties, Thailand is now on an equal footing with regional leader Singapore for the security of its electronic transactions.

E-commerce represents a growing percentage of commercial sales not only in Thailand but globally. And thanks to the abundance of free website templates, e-payment companies and inexpensive domain name hosting, starting an online business has never been easier.

However, if you're planning on becoming an e-entrepreneur, being aware of and complying with Thailand's e-commerce laws will give you a greater chance of success.

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