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TEMPORARY INJUNCTIONS: PRE-CLAIM RELIEF OPTION

The Consumer Case Procedure Act (CCPA) was enacted with a primary intent to provide better protection to historically disadvantaged consumers. One focus area was in provisional measures before judgement.

Section 56 of the CCPA provides the grounds for support of provisional measures before judgement. While there are some initial similarities, the CCPA goes further than what is currently provided by the Civil Procedure Code (CPC) and the Regulations for Intellectual and International Trade Cases B.E. 2540, which seek to prevent persons from committing acts that harm or impair the rights of a claimant prior to judgement.

Procedures for requests for provisional measures before judgement are governed by Sections 57-63 of the CCPA and are similar to those provided under the Regulations for Intellectual and International Trade Cases. This includes the specific right to seek injunctive orders during trial. It also includes a provision to control the improper use of the courts by consumers by allowing for sanctions where the court determines that revocation or modifications to injunctions were the fault of the requesting party.

In the past, if a claimant wanted to request an injunction to prevent pending or future damage, he or she would typically do so under the CPC. In making such a request, the claimant was required to file an underlying civil claim against the wrongdoer prior to or concurrent with the petition for injunctive relief. Until such time that the court was responsible for a pending civil claim for relief, requests for injunctions could not be made.

In an effort to expand protection to consumers, the CCPA now gives consumers the right to file a petition with the court seeking an injunction prior to even filing a consumer case if



there are grounds to support a petition to order pre-judgement relief under section 254 (2) of the CPC. Such relief is permissible if the court believes it is necessary to protect the interests of consumers as a whole.

There are several reasons why Thai legislators have considered it important to expand protection by providing this pre-claim right to relief. For example, some consumer cases might require more time to investigate and assess damage amounts. If the claimants have to wait for completion of the claim, they could be at risk that funds could be removed and damages multiplied. In addition, some consumer cases claim damages for product liability or defect. If no pre-claim injunctive relief is available, other consumers could be at risk of injury or damage as a result of such unsafe or defective goods. The CCPA, in allowing pre-claim petitions for injunctions, seeks to remedy these problems.

Understanding that pre-claim injunctions are serious and have a potentially adverse effect on a defendant, the CCPA also employs measures to reduce risk and potential harm. For example, the court may assign a case officer to investigate facts before issuing an order. In addition, the court has the right to seek security from the consumer to protect against the defendant's potential damages in issuing an injunction. Further, to ensure good-faith use of the law, the CCPA requires the consumer to file a complaint within 15 days from the day of issuance of the injunction or other period as ordered

by the court.

It should be noted that a defendant has the right to submit a petition to revoke or change an injunctive order, together with a claim for damages resulting from such order.

The defendant also has the right to claim damages within 30 days from the date that the court revokes or changes the previous order. If the court agrees with the defendant and revokes or changes the previous order and it is the fault of the consumer, then the court will order the consumer to pay damages to the defendant.

In addition to acting on the petition of parties, Section 63 of the CCPA gives the court the discretion to act on its own to prescribe such temporary measures or procedures necessary to the circumstances and in the interest of justice to alleviate or prevent damages to a party or to consumers as a whole before judgement.

While the court applies the CCPA and related procedural provisions to petitions for injunctive orders and damages, it is also required to consider the procedures prescribed by the regulations of the Supreme Court President. Such regulations give the court the power to order persons to provide information or to appear for inquiry concerning damages as it deems suitable.

Finally, even though the rights of consumers to seek provisional measures before judgement have increased measurably under the CCPA, consumers still have an obligation to act in good faith. If they do not, they could face liability for damages in an amount greater than their original claims against the defendant.

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