

A Study on the Legitimacy of the Behavior of Knowing Purchase of Counterfeit Goods

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Abstract. Since the news of Wang Hai's victorious compensation claim for "anti-counterfeiting through knowingly buying counterfeits" spread across China in the 1990s, many individuals engaging in similar actions have emerged in various market sectors. The academic community remains divided on how to characterize this behavior, and lawsuits resulting from such actions are frequent. By searching for "knowingly buying counterfeits" on China Judgments Online, 1,885 related civil judgments are found from January 1, 2018, to January 5, 2024, showing a declining trend in the number of judgments over this period. Although this trend may partly be due to a decrease in the rate of judgment disclosures on the website, the persistence of hundreds of related cases annually over the past two decades indicates that the legal issues surrounding knowingly buying counterfeits are still worth studying in China's market economy. This paper will analyze the legitimacy of such actions by discussing the concepts of knowingly buying counterfeits and punitive damages, using typical cases and judicial rules in China as references.

Keywords: anti-counterfeiting through knowingly buying counterfeits, punitive damages, Legitimacy, consumer status, legal reward theory

1. Problem Statement

1.1. Lack of a Unified Judicial Standard for Knowingly Buying Counterfeits Cases

To understand the current state of judicial rulings on knowingly buying counterfeits in China, the researcher randomly sampled 50 first-instance judgments from the past three years. Out of these, 20 completely rejected the plaintiff's claim for punitive damages, 18 fully supported the claim, and 12 partially supported the claim. This indicates a nearly equal split between courts supporting and opposing the application of punitive damages in such cases, highlighting the absence of a consistent judicial standard. Consequently, the principle of "similar cases, similar judgments" cannot be assured.

1.2. Dispute Over Whether Buyers of Counterfeits Are Consumers

Some court decisions argue that buyers of counterfeits are not consumers because their purpose is not to "meet life needs," but rather to profit by purchasing products with known legal defects and seeking compensation. The classification of these individuals as consumers is crucial for determining the applicability of punitive damages in their lawsuits. The ambiguity surrounding their status leads to inconsistent judgments.

2. Analysis of Knowingly Buying Counterfeits

2.1. Identification of Counterfeit Buyers as Consumers

2.1.1. From the Perspective of Statutory Interpretation

According to Article 2 of the Consumer Protection Law, the definition of a consumer is intended to distinguish between life consumption and production consumption, not between life consumption and knowingly buying counterfeits. The definition should

be based on whether the purchase is for personal or family life needs, regardless of the buyer's awareness of the product's authenticity.

Furthermore, the provision's requirement for "life consumption needs" implies two conditions: the consumer must be a natural person, and the purchase must be for non-production purposes. Therefore, as long as the purchase is not for production purposes and is not made in the name of a legal entity, the buyer should be recognized as a consumer. This interpretation aligns with the law's purpose of providing special protection to consumers in weaker positions.

Additionally, the Supreme People's Court's press release on the "Interpretation on Several Issues Concerning the Application of Law in the Trial of Food and Drug Dispute Cases" clearly states that buyers of counterfeits are considered consumers, reinforcing the statutory interpretation [1].

2.2. Reasonableness of Applying Punitive Damages to Knowingly Buying Counterfeits

2.2.1. Concept of Punitive Damages

Originating from Anglo-American law, punitive damages, also known as exemplary damages, refer to compensation that exceeds the actual losses suffered by the injured party or the contract-compliant party. Initially, punitive damages served a compensatory function, primarily addressing mental suffering.

In China, scholars like Liu Shuilin argue that punitive damages serve compensatory, deterrent, and punitive functions, which is the prevailing view [2]. Others, like Han Linan, suggest that incentivization and compensation are primary, with punitive functions being secondary [3]. The researcher proposes that the functions of punitive damages should be considered independently, aligning different functions with specific regulatory needs to highlight the legislative value of the norm, thereby integrating punitive damages with the principle of making the injured whole.

2. Significance of Punitive Damages in the Consumer Protection Law

First, in China's Consumer Rights Protection Law, the starting point for punitive damages is aimed at businesses. As previously mentioned, the general consensus is that punitive damages differ from compensatory damages intended to cover losses, as they objectively increase the burden on the infringer. In the consumer sector, punitive damages for fraud are intended to penalize the business's fraudulent behavior beyond the loss incurred, thus deterring future violations and serving as a warning to other businesses [4]. This implies that the law, through the provision of punitive damages, conveys a negative evaluation and regulatory intent towards such behavior.

Secondly, if we consider punitive damages in the Consumer Rights Protection Law from the consumer's perspective, we can naturally see the function of punitive damages shift from restriction to reward and encouragement based on the mindset of ordinary consumers profiting from such claims. Rewards in legislation reflect a country's positive evaluation of such behavior, implying its social utility. If punitive damages are viewed as rewards, they can be understood as aiming to expose the business's illegal activities through consumer lawsuits. On the one hand, this exposure serves to inform the public of the business's violations, thereby achieving reputational penalties. On the other hand, it aims to prompt government regulatory bodies to initiate administrative penalties, such as imposing severe fines or criminal liabilities, thus accomplishing the goals of punishment and deterrence. The author believes that whether punitive damages should be regarded as rewards or restrictions should consider the inherent logic of the law and the public's perception of the damages. The distinction between positive and negative evaluations of the law is similar to the distinction in legal theory between "Good Samaritan laws" and "Bad Samaritan laws." If the behavior is generally altruistic, such as helping others or acting bravely, the law will naturally fully affirm the factual behavior, using "Good Samaritan laws." This is because such actions often do not benefit the actor and may even cause harm. In contrast, the main and obvious beneficiary of knowing purchase behavior is the consumer, rather than the public, thus weakening its social utility compared to the aforementioned behaviors. However, the law cannot entirely deny the public benefit of knowing purchase behavior. Therefore, to clarify the legislative significance of punitive damages, the punitive damages arising from knowing purchases should still aim to regulate and restrict improper business practices while also considering the public perception that combating improper business practices should serve public rather than private interests.

3. Recommendations for a Unified Judicial Standard on Knowingly Buying Counterfeits

3.1. Standardizing the Recognition of Consumers in Punitive Damages Cases

Based on the textual interpretation of the Consumer Rights Protection Law and relevant provisions, it is evident that one who "knowingly buying counterfeits" is recognized as a consumer and has legitimacy. However, the statute itself does not provide an exhaustive explanation of the term "consumer." Therefore, Article 2 of the Consumer Rights Protection Law needs to be supplemented to include the specific circumstances of "knowingly buying counterfeits" litigants. This would align with the inherent meaning of the text and ensure a consistent standard for identifying consumer status during judicial proceedings.

3.2. Clarifying the Scope of "Losses" in Punitive Damages Cases

When ordinary consumers purchase counterfeit goods, they are unaware of the product's defects, inevitably leading to damages during usage that require compensation. In this context, the provisions of the Consumer Rights Protection Law naturally align with the principle of compensatory damages for producers and operators [5]. However, in cases where "knowingly buying counterfeits" litigants knowingly purchase defective products, no actual damage occurs during the product's usage since they are aware of the defects. Given that the identity of the "knowingly buying counterfeits" litigants has been established and the product defects constitute a statutory compensation scenario, these litigants have a clear basis for claims. While the establishment of responsibility is evident from the claim basis, the specific scope of compensation remains unclear.

According to tort liability theories, losses in the consumer field can be categorized into (1) the cost of the purchased product, (2) personal and property damages caused by the product's quality issues, and (3) subsequent legal costs incurred by the consumer for defending their rights. This detailed standard was well-demonstrated in the case of *He Hui v. Shanghai Maijiu Trading Co., Ltd. and Suzhou Industrial Park Ruia Cafe*. In this case, He Hui, as a professional "knowingly buying counterfeits" litigant, purchased wine without legal import labels from a cafe and demanded compensation equivalent to the product's original price plus tenfold compensation, citing non-compliance with national import regulations. He had previously filed similar lawsuits in different courts across the country.

According to relevant laws, producing or knowingly selling food that does not meet safety standards entitles consumers to not only claim damages but also to demand compensation amounting to ten times the product price or three times the damages. The appellate court upheld the original price compensation and supported the tenfold compensation request. This verdict indicates that the appellate court recognized the product price as a loss to the consumer and considered the litigation costs incurred by the "knowingly buying counterfeit" litigant during the defense of their rights. Since the statutory compensation amount is fixed, the court did not exercise discretion in the compensation decision and ruled based on the tenfold product price.

Such considerable compensation outcomes from "knowingly buying counterfeit" behaviors can naturally entice more consumers to engage in similar actions, potentially encouraging widespread participation in such practices. Therefore, the author suggests clearly defining losses in the consumer field and appropriately adopting a "compromise theory" for "knowingly buying counterfeit" issues to standardize the limits of punitive damages. Legislative bodies could empower courts with discretionary authority over punitive damages, considering the specifics of each case, the severity of the business's misconduct, and the identity of the claimant as a "knowingly buying counterfeit" litigant. This approach aims to balance the punitive aspects towards businesses and the rewarding aspects for "knowingly buying counterfeit" litigants.

4. Conclusion

The issue of knowingly buying counterfeits has persisted in China for years, necessitating research to clarify its legitimacy and establish consistent judicial standards. Recognizing counterfeit buyers as consumers and applying punitive damages appropriately can help unify judicial practices and achieve the goal of "similar cases, similar judgments." Legislative efforts should focus on defining consumer status and clarifying the scope of losses in punitive damages to balance the punitive and incentivizing effects of the law.

The issue of knowingly purchasing counterfeit goods ("fake-buying") has long existed in China and is a common phenomenon in the field of economic law. Researching and analyzing this issue to clarify its legitimacy is beneficial for establishing unified adjudication rules in China's judicial process, thereby achieving the goal of consistent rulings for similar cases. According to the Consumer Rights Protection Law and related judicial interpretations and responses, "knowingly purchasing counterfeit" litigants are considered consumers, which legitimizes the application of punitive damages to "knowingly purchasing counterfeit" cases.

However, in the process of unifying adjudication rules, it is necessary at the legislative level to establish consistent standards for recognizing "knowingly purchasing counterfeit" litigants as consumers. Additionally, there needs to be a clear definition of the specific content of "losses" in punitive damages related to "knowingly purchasing counterfeit". This approach balances the punitive significance towards businesses with the rewarding significance for "knowingly purchasing counterfeit" litigants.

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