

A Study on the Legal Regulation of Professional Anti-Counterfeiting Activities

Meng Yuxuan, Wang Jin

Law School, Beijing Wuzi University, Beijing, China

ABSTRACT

This paper examines the current state, influencing factors, and regulatory strategies concerning professional anti-counterfeiting activities in China. Through a comprehensive literature review and empirical analysis, the study finds that although existing domestic and international research has made some progress in this area, several challenges remain. These include ambiguities in legal provisions—particularly the lack of detailed operational guidelines for frontline law enforcement and business operators—and an overemphasis on consumer protection that may inadvertently undermine the legitimate interests of businesses. The paper argues that an effective regulatory framework should not only block avenues for malicious claims but also facilitate the dissemination of legal knowledge and compliance support to small and medium-sized enterprises (SMEs). Such a dual approach would enable the system to achieve a more balanced equilibrium between consumer protection and the deterrence of profit-driven abuse. This article innovatively proposes a multi-dimensional identification framework for professional anti-counterfeiting conduct, offers practical guidance for merchants to avoid being targeted, and provides concrete recommendations for improving existing regulations. It seeks to translate abstract legal norms and policy orientations into actionable measures. Finally, the paper concludes with a summary of findings and suggests directions for future research.

KEYWORDS: *professional anti-counterfeiting; malicious claims; punitive damages; consumer rights; legal regulation; identification criteria.*

I. INTRODUCTION

1.1. Research Background and Significance

The vitality of a legal system depends not only on the legislative intent behind its enactment but also, and more importantly, on its practical application. In 1993, China promulgated the *Law on the Protection of Consumers' Rights and Interests*, with Article 49 establishing a punitive damages regime that provided for "one-for-one compensation upon return." At that time, lawmakers faced a market environment plagued by counterfeit goods, where administrative enforcement lagged far behind the rapid proliferation of such products. The introduction of punitive damages was essentially a strategy to supplement public authority with private rights—using economic incentives to transform the vast consumer base into a vigilant monitoring force. In 1995, Wang Hai purchased counterfeit Sony headphones in Beijing

and successfully obtained compensation, earning him the media nickname "market woodpecker." For a considerable period thereafter, professional anti-counterfeiting activities carried the public's hope for purifying the marketplace.

The punitive damages system has since evolved from the "one-for-one" compensation model to the "ten-for-one" compensation stipulated in the *Food Safety Law*, fundamentally altering the economic calculus for claimants. After 2009, the leverage effect of tenfold compensation attracted more individuals seeking profits through claim filings. In 2013, the Supreme People's Court issued a judicial interpretation clarifying that "knowing about the counterfeit and still purchasing it" does not preclude consumers from asserting their rights in the food and

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drug sector, thereby objectively creating a more favorable judicial environment for professional anti-counterfeiting activities. By around 2024, professional anti-counterfeiting had transformed from sporadic rights-defense phenomena into a highly organized, gray-market industry. In 2023, the China Chain Store & Franchise Association monitored 24,000 professional claimants who filed 730,000 complaints within a single year—among which as many as 220,000 were malicious complaints citing food products. In 2020, Changsha City received 32,000 professional anti-counterfeiting complaints citywide; earlier data showed that 7,500 professional claimants filed 250,000 complaints in Changsha within one year, and their behavioral patterns had become completely detached from genuine consumer rights protection.

The severity of the problem is reflected not only in the numbers but also in the strain it places on governance systems. A substantial amount of administrative resources is consumed in processing repetitive and malicious complaints. When Fengqing County in Yunnan Province reviewed its local administrative reconsideration cases, it found that, since 2022, 62% of the 146 cases involved malicious claims. In the first half of 2017, the Market Supervision Bureau of Haimen, Jiangsu Province, received a total of 112 complaints and reports via the 12315 hotline concerning home textile products, of which as many as 73 involved absolute advertising claims, accounting for 65.2%.

From an academic perspective, the issue of professional anti-counterfeiting litigation spans multiple legal domains—including consumer protection law, food safety law, administrative law, and criminal law—and serves as a prime example for examining how legal systems are actually applied and adapted in practice. In particular, there remains considerable room for further exploration regarding the criteria for distinguishing between legitimate claims and malicious lawsuits, as well as how to strike a concrete balance between protecting consumers and curbing abusive claims. The practical significance of this study lies in the fact that, once the institutional framework is established, it must be enriched through extensive, concrete efforts—transforming abstract rules on paper into tools that can be effectively used by frontline law enforcement officers and merchants alike.

1.2. Purpose and Methods of the Study

The primary objective of this study is to conduct an in-depth exploration of the current legal regulation of professional anti-counterfeiting efforts, including their status quo, underlying causes, and coping

strategies, and to propose relevant recommendations and measures. The research methodology primarily involves literature review and empirical studies. We systematically review relevant literature to gain a comprehensive understanding of the historical context, current situation, and emerging trends in professional anti-counterfeiting. We collect data through methods such as questionnaires and conduct thorough analyses of the collected data. Based on our findings, we develop a multi-dimensional framework for identifying professional anti-counterfeiting activities, providing practical and actionable reference standards for grassroots law enforcement. Additionally, we analyze feasible pathways for enhancing merchants' compliance capabilities and enabling them to respond appropriately in accordance with the law, while also examining key contentious issues in legal proceedings and exploring potential directions for their resolution.

1.3. Content and Structure of the Study

The first part of this paper is the introduction, which presents the background, significance, and methodology of the research. The second part is the main body, covering the regulatory efforts of the state in recent years at both legislative and judicial levels regarding professional anti-counterfeiting, the advancements and deficiencies of the current framework, identification schemes for professional anti-counterfeiting, a comprehensive judgment framework constructed from multiple dimensions, practical paths for merchants to operate in compliance and handle issues in accordance with the law, key points of contention in legal proceedings, and suggestions for improving the current legal regulations. The final part is the conclusion, which summarizes the scattered discussions and points out directions for future research and improvement.

II. Body

2.1. The National Institutional Framework for Addressing Professional Anti-Counterfeiting Activities

In response to the governance challenges posed by professional anti-counterfeiting efforts, the national-level response has significantly accelerated since 2024. On July 1, 2024, the *Implementation Regulations of the Consumer Rights Protection Law* officially came into effect. Article 27 explicitly stipulates: "Operators shall not exploit complaints or reports to seek improper benefits, infringe upon the legitimate rights and interests of other operators, or disrupt market order." In terms of legislative technique, the regulation avoids direct controversy over restricting consumers' rights to defend their own interests, while precisely targeting those who make a

living by pursuing anti-counterfeiting actions and seeking compensation as their primary occupation.

In August 2024, the Supreme People's Court issued the *Interpretation on Several Issues Concerning the Application of Law in the Trial of Disputes over Punitive Damages for Food and Drug Products*. It provides that when hearing cases involving punitive damages for food and drug products, courts shall examine whether the purchase was made within the scope of reasonable living consumption needs. Any portion exceeding such reasonable needs will not be supported in claims for punitive damages. The interpretation does not completely prohibit claims by those who knowingly purchase counterfeit goods, but imposes a quantitative limit on the application of punitive damages.

In August 2025, the State Administration for Market Regulation issued the *Measures for Handling Complaints and Reports in Market Supervision and Administration (Draft for Comments)* and publicly solicited comments from the public. After receiving feedback and undergoing revisions, the Measures officially came into effect on April 15, 2026. The core of the new regulations can be summarized in three key institutional designs. First, complaints and reports are strictly separated, effectively preventing professional counterfeit-busters from using the complaint mechanism to exert pressure. Second, complaints not made for the purpose of personal consumption will not be accepted; upon receiving a complaint, market regulators have the right to verify whether the complainant's purpose is indeed for personal consumption. For complaints clearly aimed at profit-making, regulators may directly decide not to accept them. Third, malicious reporting will be incorporated into the credit punishment system—malicious reporters who are duly identified will have their records entered into credit files, and their right to file complaints and reports will be restricted in terms of frequency for a specified period. By clarifying acceptance criteria, processing procedures, mediation mechanisms, feedback systems, and oversight responsibilities, these Measures have established a unified, authoritative, scientifically sound, efficient, and consumer- and business-friendly complaint and report handling system for market regulation. This system effectively safeguards the legitimate rights and interests of both consumers and operators and enhances the effectiveness of market supervision.

At the local level, the Dali Prefecture Administration for Market Regulation has recommended that higher authorities, in collaboration with specialized agencies, issue unified guidelines. The Guangdong Provincial Administration for Market Regulation emphasized the

need to strengthen research on regulating malicious, professional anti-counterfeiting activities. These voices from the grassroots reflect a common issue: while policy signals are already very clear, more detailed guidance is needed when it comes to practical implementation.

While the current institutional framework has made significant progress, it has also revealed certain areas that still need improvement. Although using reasonable living and consumption patterns as a criterion for judgment is heading in the right direction, there still lacks uniform reference factors for determining such cases. For instance, how many bags of cookies per month would be considered reasonable for a family of three? There is no legally established standard answer to this question, and different regions and individual judges may have widely varying interpretations. Moreover, the procedural guidelines for handling complaints and reports—specifically, the practice of rejecting cases not intended for consumer purposes—also require further refinement. On the ground, what specific information should frontline staff rely on to determine whether a party's purpose falls within the scope of "living and consumption needs"? And if an applicant files an administrative review due to an incorrect determination, what kind of evidentiary burden would the frontline staff be required to bear? These issues all call for more practical feedback from the front lines as well as the development of complementary detailed rules.

2.2. Identification Scheme for Professional Anti-Counterfeiting Activities

Distinguishing between legitimate rights protection and malicious claims is the logical starting point for addressing the issue of professional anti-counterfeiting activities. Currently, the primary criterion provided by law is the "need for personal consumption." Although this criterion is conceptually clear, it is relatively difficult to apply directly in practice. After analyzing enforcement practices and judicial precedents from various regions, we believe that a more operational and comprehensive judgment framework can be constructed from three perspectives.

The external characteristics of purchasing behavior represent the first perspective. Professional counterfeit-busting buyers typically exhibit distinct patterns in their buying habits: they tend to make large-scale purchases of the same product within a short period, rather than buying everyday items from various categories like ordinary consumers do. Professional counterfeit-busters also frequently split up their orders, breaking down bulk purchases into

multiple smaller orders. This strategy allows them to claim punitive damages for each individual order when filing subsequent claims, thereby circumventing the quantity limits imposed by regulations on reasonable consumption. Moreover, repeatedly purchasing the same problematic product using the same account or the same delivery address and then filing claims for compensation will also be identified as the behavior of professional counterfeit-busters. In contrast, ordinary consumers who discover defects in a product usually opt to return it or simply stop buying that particular item altogether. The repeated purchase of the same problematic product is difficult to explain in terms of genuine consumer demand.

The nature of the complaint is the second key perspective—and also a crucial criterion for distinguishing between legitimate rights protection and malicious claims. Legitimate rights protection complaints typically focus on substantive safety issues with products, such as food spoilage or deterioration, pharmaceutical ingredients that fail to meet national standards, or electrical appliances posing risks of electric leakage. These issues directly affect consumers' lives and health and are precisely the kinds of risks that consumer protection laws aim to prevent. Malicious claims largely focus on formal defects in labeling and marking—such as minor deviations in the format of nutrition labels from national standards, or differences of just a few tenths of a millimeter in the character height on product packaging compared to regulatory requirements. More significantly, professional counterfeit-busters fail to distinguish between formal defects and actual hazards. This indiscriminate attack pattern precisely reveals the profit-driven nature of their actions.

The third angle of analysis focuses on the characteristics of claim-seeking methods. When communicating with merchants, professional counterfeit-busters typically exhibit highly formulaic behavioral patterns. They first send a screenshot of a legal provision, then specify a claim amount precise to the nearest hundred yuan—often maximizing their own interests within the statutory compensation range. Next, they attach a deadline for "private resolution," creating a sense of urgency, and finally warn that failure to respond will result in escalating the complaint. The entire process resembles following a step-by-step manual, starkly contrasting with the emotional negotiation style adopted by ordinary consumers who discover product issues. These three dimensions are not isolated criteria for assessment; rather, they must be considered comprehensively and in tandem. A typical consumer might also purchase multiple identical items at once, raise complaints

about labeling issues, or cite legal provisions during communication. However, when these factors—the frequency of purchasing behavior, the nature of the complaint content, and the pattern of claim-seeking methods—are examined together, the distinction between legitimate rights protection and malicious claims usually becomes clear.

This identification framework cannot serve as an excuse for merchants to refuse legitimate rights protection. When consumers assert their rights in accordance with the law—regardless of the amount of compensation sought or the method of communication—as long as the purchase was made out of genuine personal consumption needs and the complaint pertains to actual harm to their substantive rights and interests, they should receive full legal protection. The purpose of the identification scheme is not to restrict consumer rights; rather, it aims to ensure that limited law enforcement and judicial resources are used more effectively to serve those who truly need protection.

2.3. A Pathway to Help Merchants Avoid Professional Counterfeiters

Small and medium-sized businesses are at a disadvantage when facing professional counterfeiters. While legal regulations are becoming increasingly sophisticated, the knowledge base of small and medium-sized operators has not been updated accordingly. This information gap is precisely the structural foundation that enables professional counterfeiters to continue profiting.

The work for merchants can be divided into two key areas: compliance-based operations before the fact and lawful responses after the fact. The core task of compliance-based operations before the fact is to reduce merchants' unfamiliarity with legal regulations. Food labels are among the most frequent targets of professional anti-counterfeiting investigators. What merchants need is not to systematically study the entire *Food Safety Law*, but rather to identify the specific areas in their daily operations that are most likely to attract scrutiny. Key information—such as the mandatory content that must be indicated on pre-packaged food labels, labeling requirements for bulk foods, and the absolute terms prohibited in advertising and promotional materials—can be compiled into a one-page self-checklist, making it easy for merchants to conduct their own spot checks. For online store owners engaged in e-commerce, they can also use the same approach to check whether their product detail pages contain terms like "best" or "purely natural"—words that are prone to complaints—and thus proactively avoid potential issues.

When comparing legal provisions, what merchants really need to know are the specific response strategies for various scenarios. The key to effective post-event handling lies in changing merchants' tendency to settle matters privately. Many merchants rush to pay compensation as soon as they receive a complaint—not because they feel guilty, but out of fear of uncertain consequences. Breaking this mindset requires merchants to understand a fundamental fact: after the new regulations take effect in 2026, consumer protection authorities will be able to refuse to accept complaints that are not made for the purpose of everyday consumption. After receiving a complaint, merchants do not have to immediately decide whether to compensate or not; they have the right to verify the complainant's identity, determine whether the complaint is a malicious claim, and demand that the other party resolve the issue through formal mediation or litigation procedures.

Evidence preservation is the most easily overlooked step in the response process. After receiving a complaint, merchants should first verify the identity of the complainant, then determine the nature of the complaint and decide whether to negotiate or pursue formal procedures. At the same time, they should carefully retain and archive all relevant evidence.

In the long run, the fundamental solution to this issue lies in narrowing the gap between the density of legal rules and the compliance capabilities of small and medium-sized operators. While this gap cannot be eliminated in the short term, it can be gradually narrowed through continuous knowledge transfer and capacity-building efforts.

2.4. Analysis of Key Points of Contention in Legal Proceedings

When professional anti-counterfeiting disputes enter the judicial process, several core points of contention repeatedly surface. These issues involve the identification of consumer status, compensation for knowingly purchasing counterfeit goods, the base amount used to calculate punitive damages, and the boundaries of the crime of extortion.

Regarding the dispute over whether the plaintiff qualifies as a consumer, Article 2 of the Consumer Rights Protection Law limits the scope of application to "for the purpose of household consumption." This means that if a purchase is not made for household consumption purposes, the buyer does not qualify as a consumer under the law. In judicial practice, courts have not adopted a completely uniform stance on this issue. Some courts tend to interpret the boundaries of "household consumption needs" strictly, while others take a more expansive approach. In 2024, the Supreme People's Court issued a judicial

interpretation that strikes a balance by using "reasonable household consumption needs" as the standard. Rather than denying the consumer status of professional anti-counterfeiting activists, the interpretation restricts their right to claim damages when their actions exceed the bounds of reasonableness.

The question of whether one can obtain compensation for knowingly purchasing counterfeit goods merits independent analytical consideration. According to Article 2 of the *Consumer Rights Protection Law*, a consumer is defined as a natural person who purchases or uses goods or receives services for the purpose of personal living consumption. Whether the purchase and use of goods are for personal living consumption constitutes the substantive criterion for determining whether a buyer and user qualifies as a consumer. Whether the consumer was aware of the defects in the goods is irrelevant to the definition of "consumer." The view that those who knowingly purchase counterfeit goods should not be entitled to punitive damages largely adopts the reasoning that such individuals do not qualify as consumers. Article 12, Paragraph 1 of the Interpretation on Punitive Damages for Food and Drug Violations stipulates that claims for punitive damages by those who knowingly purchase counterfeit goods must be limited "within the scope of reasonable living consumption needs," which precisely reflects this line of reasoning. The new judicial interpretation issued in 2024 has imposed restrictions on the scope of compensation for "knowingly purchasing counterfeit goods," marking an important policy adjustment. If a purchaser knowingly buys large quantities of goods with defects deliberately, both the seller and the purchaser exhibit problematic subjective states; thus, the degree of fault attributable to each party needs to be reassessed. What may appear to be merely a technical calculation of amounts actually involves the core benchmark for applying the legal system. Following the logic of the 2024 judicial interpretation, any purchase exceeding the bounds of reasonable living consumption needs will be regarded as artificially inflated losses aimed solely at obtaining compensation, and therefore such purchases will no longer be fully protected by punitive damages. As a result, only a small proportion of a large-scale purchase can qualify for punitive damages, causing the cost-benefit ratio of mass claims to shift dramatically and fundamentally altering the economic incentives for professional anti-counterfeiting activists.

The boundary issue of extortion is perhaps the most serious legal consequence that professional anti-counterfeiting efforts may encounter. Although the

behavior of professional anti-counterfeiting activists—"knowing about the counterfeit and deliberately purchasing it"—does not constitute extortion. Article 3 of the Supreme People's Court's Reply Opinion points out that "in current judicial practice regarding consumer rights protection, the act of knowingly purchasing counterfeit goods has shown a trend toward commercialization, with an increasing number of professional anti-counterfeiting activists and anti-counterfeiting companies (groups) emerging. Their motives are no longer aimed at purifying the market; rather, they exploit punitive damages to seek personal gain or use such opportunities to extort merchants." However, when professional anti-counterfeiting activists threaten to report violations and demand exorbitant "sealing fees" far exceeding the statutory compensation standards, their conduct shifts from civil claims into criminal offenses. Distinguishing between legitimate civil claims and extortion typically involves considering several factors: whether the act involves intimidation with the intent of illegal appropriation, thereby inducing fear in the victim; whether the claimed amount has a legal basis; whether the claimed amount significantly exceeds the statutory compensation standards; and whether there is a causal relationship between the intimidating behavior and the acquisition of property. The delineation of the boundaries of extortion carries significant behavioral guidance for the entire professional anti-counterfeiting industry. The law clearly distinguishes between lawful rights protection and criminal offenses, leaving no room for compromise.

2.5. Recommendations Regarding Current Legal Regulation

2.5.1. Establish a Blacklist System for Managing Professional Anti-Counterfeiting Investigators

Regarding the administrative law regulation of professional anti-counterfeiting activities, it is necessary to establish a blacklist system for professional anti-counterfeiting practitioners. Although "blacklist" is not a legal term per se, similar systems do exist. Due to the nature of professional anti-counterfeiting activities, administrative authorities often find it difficult to carry out preventive measures in advance; instead, they can only engage in post-event supervision once incidents have already occurred. A blacklist serves precisely this purpose: by maintaining an archival record of individual professional anti-counterfeiting practitioners or companies that frequently disrupt market order, it enables potential preventive measures to be taken in advance.

2.5.2. Issuance of Unified Multi-Dimensional Criteria for Identifying Malicious Claims

The current legislation has established the core criterion of "needs for daily living consumption," yet this criterion still appears rather abstract in grassroots implementation. It is recommended that the State Administration for Market Regulation, jointly with the Supreme People's Court, issue a set of detailed guidelines for determining such needs. These guidelines should abandon the single threshold based on purchase quantity and instead adopt the comprehensive assessment model proposed earlier in this document.

2.5.3. Improving the Tiered Application of Punitive Damages and the Exemption System for Minor Defects

It is recommended that a tiered application mechanism be introduced in legislative or judicial interpretations. Under the administrative regulatory framework, law enforcement agencies should enjoy broad discretion in deciding whether to initiate an investigation and, after investigation, whether to impose penalties. Based on considerations such as the sufficiency of evidence, specific circumstances, and the degree of social harm, these agencies can determine which issues to address while choosing not to initiate cases—or, if a case has already been initiated, refraining from imposing penalties—for behaviors that pose minimal harm. By exercising their discretionary power in setting the enforcement agenda, law enforcement agencies can concentrate limited resources on addressing truly significant issues, thereby avoiding actions lacking substantive legitimacy. For example, violations in the consumer sector could be categorized into two major types: substantial safety risks and formal labeling defects. With regard to minor labeling defects that do not affect food safety and will not mislead consumers, once the administrative authority has ordered corrective measures, the entity responsible may be exempted from punitive damages, with only the obligation to offer returns and refunds remaining.

III. Summary

Professional anti-counterfeiting efforts in China have been underway for nearly three decades. Initially emerging as "market woodpeckers," they played a unique role in social oversight during an era marked by rampant counterfeit goods and inadequate administrative regulation. Over time, however, when some individuals began to shift this tool from "fighting counterfeits" to "seeking profit," the original intent of the system started to drift away from its purpose. A punitive damages system that is frequently invoked yet rarely leads to substantial improvements

in product quality may now be generating social costs that exceed its social benefits.

The series of laws and regulations issued intensively by the state from 2024 to 2026 mark a shift in the governance of professional anti-counterfeiting efforts—from fragmented, locally-driven explorations to a stage of systematic institutional development. Once the institutional framework is established, it still requires substantial further refinement. At the grassroots level, law enforcement officers continue to need more specific guidance for identifying counterfeit goods in their daily work. The shortcomings in merchants' compliance capabilities have yet to be effectively addressed, and certain judicial standards in practice still need to be further harmonized.

This study seeks to make its own contribution to this refinement work. The multi-dimensional discrimination scheme we propose constructs an operational and comprehensive judgment framework from three perspectives: characteristics of purchasing behavior, nature of complaint content, and features of claim procedures, thereby avoiding a "one-size-fits-all" approach to simplifying judgment. The merchant compliance guidelines and legally sound response strategies we have discussed aim to lower the information threshold, helping small and medium-sized business operators reduce their risk of falling victim to malicious claims. Our analysis of key contentious issues in legal proceedings has clarified the major divergences and emerging trends in current judicial practice. Yet this work is far from over. The proposed solutions must be tested and refined through an increasing number of real-world cases; merchant guidelines need to gather feedback and undergo adjustments as they are rolled out at the grassroots level; and our legal analyses must remain up-to-date in light of the continuous emergence of new case law. Over time, the system will be fine-tuned through repeated court rulings and administrative decisions, and society's understanding of fairness will gradually become more focused through ongoing debate. Striking a balance between safeguarding consumers' legitimate rights and curbing malicious claims will take time—and will also require more down-to-earth research to provide solid evidence for further institutional improvements. The purpose of the law has never been to encourage one party to "hunt" another; rather, it is to uphold a fair market where law-abiding businesses are protected from bullying and where those who break the law pay the price. When rules can both protect consumers' reasonable rights and allow honest merchants to conduct their

business with peace of mind, the era when professional anti-counterfeiting efforts were treated as a "problem" may truly be coming to an end.

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