

On the Denial of Consumer Identity and Protection of People Who Knowingly Buy Fake Products

—Taking Chinese Market as an Example

Yong Li^{1*} , Xiongbiao Ye²

¹Law School, University of International Business and Economics, Beijing, China

²Central China Normal University, Wuhan, China

Email: *01680@uibe.edu.cn

How to cite this paper: Li, Y., & Ye, X. B. (2022). On the Denial of Consumer Identity and Protection of People Who Knowingly Buy Fake Products. *Beijing Law Review*, 13, 528-543.
<https://doi.org/10.4236/blr.2022.133034>

Received: August 4, 2022

Accepted: September 2, 2022

Published: September 5, 2022

Copyright © 2022 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution-NonCommercial International License (CC BY-NC 4.0).
<http://creativecommons.org/licenses/by-nc/4.0/>



Open Access

Abstract

All organizations and individuals that purchase counterfeit products ought to be protected by the law. However, the *Law of the People's Republic of China on the Protection of Consumer Rights and Interests* (referred to as “the new *Consumer Law*”) is not applicable to all of them. Each law has its scope of application, and all legal norms and terms have specific connotation and extension for which arbitrary interpretation is not allowed. Currently, how to identify a person who knowingly buys fake products is usually determined based on whether the purchase is made “for the needs of daily consumption”. The paper applies case study and comparative analysis methods to analyze the legislative purpose of the New *Consumer Law*, the practical dilemma of the primary criterion to identify the purpose of buying fake products, and the position change of these people throughout the revision of the *Consumer Law*, aiming to argue that whether a “knowingly-buy-fake” consumer is protected by the New *Consumer Law* should be determined by whether the buyer is in a disadvantaged position compared to the business operators. The consumer identity should be denied, nevertheless the legitimate rights and interests of them, as civil subjects, shall still be effectively protected by relevant laws.

Keywords

Knowingly Buy Fake Products, Consumer, Disadvantaged Position, The *Law on the Protection of Consumer Rights and Interests*, The Chinese Market

1. Introduction

In 1995, Mr. Wang Hai¹ bought certain counterfeit Sony headsets and then filed

¹Named the first-person professional fake hunter of China in the 1990s, Mr. Wang Hai fired the first shot of consumer fraud rights protection. His behavior also influenced the buy-false-consumption prologue and made disputes for judgement of China under the former *Consumer Law*, but awakened consumer consciousness of rights protection from that period.

a civil lawsuit and obtained double what he paid as compensation in accordance with Article 49 of the *Law on the Protection of Consumer Rights and Interests* 1994 (Zhao, 2020). This article stipulates a punitive damage mechanism of “refund plus same costs compensation” against business operators’ fraudulent activities. This was the first case of protecting consumers’ rights against fraud and started the history of knowingly-buy-fake consumption in China. In 2014, the punitive damages for fraud in the new *Consumer Law* were amended to “refund plus three-time costs compensation” with a minimum amount of compensation of RMB 500. The revised provision further stimulated the enthusiasm of people who knowingly buy fake products to find, buy and fight against fake products (Jiang & Ma, 2022). On China Judgements Online, with “knowingly buy fake products” and “punitive damages” as the keywords, and from March 15, 2014, to March 15, 2018, as the time range of judgment dates, 1235 results² are found. Specifically, 36 results are from March 15, 2014, to March 15, 2015, and 889 from March 15, 2017, to March 15, 2018. The number of such cases increased by almost 25 times in just three years. Along with such exponential growth, more issues emerge from the fight against counterfeit products. For example, some people who knowingly buy fake products were beaten to death when fighting against fakes; some gave lessons on how to deal with fake products; organizations were formed by those who knowingly buy fake products to claim compensation; some even blackmailed lawful business operators for a huge amount of compensation. Such behaviors have seriously undermined market security and stability. There are different views between theorists and practitioners on whether consumers who knowingly buy fake products are protected by the new *Consumer Law*. To maintain the stability of the consumer goods market and protect the legitimate rights and interests of consumers, the paper discusses this problem from five aspects: first, clarify that the new *Consumer Law* aims to protect consumers who are in a disadvantaged position based on comparative jurisprudence; second, criticize the subjective standard of purchasing “for the needs of daily consumption”; third, clarify that the position of consumers that knowingly buy fake products and business operators is reversed through empirical analysis; fourth, clarify that the customer identity of people who knowingly buy fake products are denied; fifth, make recommendations for protecting people who knowingly buy fake products. The paper is intended to find an effective method, from the perspective of the necessity of a consumer disadvantaged position, to solve this long-standing problem.

2. Legislative Purpose of the New *Consumer Law*: To Protect Disadvantaged Consumers

Article 1 of the new *Consumer Law* states that “the present Law is formulated for the protection of the legitimate rights and interests of consumers, maintenance of the socio-economic order and promotion of the healthy development of the socialist market economy.” This provision clarifies the three purposes of the

²See conditional searching on China Judgements Online at <https://wenshu.court.gov.cn/>.

new *Consumer Law*, maintaining and developing stable economic order, protecting the lawful rights and interests of consumers, and promoting healthy economic development. China's new *Consumer Law* has made protecting the unilateral rights and interests of consumers in consumer-business-operator relationships as its primary purpose. This seems "unfair" to business operators. However, only by giving consumers favorable protection can we achieve true fairness and justice for both parties in such relationships. It is determined by the "disadvantaged" position of consumers and the way how the law maintains social justice. Protecting disadvantaged consumers is also a common legislative objective amongst foreign countries, and this has become a general principle in the legislation in terms of the protection of consumer rights and interests (Guo, 2015). For example, Article 1 of Japan's *Consumer Contract Act* provides that to protect the interests of consumers, and thereby to contribute to the stabilization and improvement of the general welfare of the life of the citizens and to the sound development of the national economy by permitting, in consideration of the discrepancy in quality and quantity of information and in the negotiating power between consumers and business operators. In the legislative guidelines of the EU, consumers are no longer considered as mere subjects, but as subjects that must be protected in specific circumstances where they have much less negotiating power than business operators (Cui, 2013). The *German Civil Code* defines the concept of a consumer by means of a negative definition, making it clear that it protects all subjects other than business operators that have sufficient negotiation power. As can be seen, the disadvantaged position of consumers is recognized as the logical starting point and a basic concept for protecting consumer rights and interests (Gan, 2016).

Normally consumers are disadvantaged in the following three aspects:

First, consumers are disadvantaged in access to information. From the perspective of regulative functions, the *Law on the Protection of Consumer Rights and Interests* focuses on consumers' disadvantaged position caused by information asymmetry (Lu, 2014). It has shown in two aspects. Firstly, consumers have little information about the goods or services they purchase because of their limited ability to obtain information and access to information when purchasing goods or services. On the contrary, as the goods or services provider, business operators have been selling the same goods or providing the same services for a long time, are quite familiar with these, and also have rich sales experience. Hence, there is a serious information asymmetry between these two parties. Secondly, consumers' knowledge and awareness are limited and far lower than these of business operators. Even though business operators provide relevant information to consumers, consumers are unlikely to fully understand the information because of the technical terms or obscure words, resulting in unchanged information disadvantage. As Prof. Claus-Wilhelm Canaris, a German Jurist, insisted that as long as consumers have access to sufficient information, they have the ability, of their free will (Canaris, 2006), to reasonably judge and

protect their rights and interests in a transaction (Cao, 2011). Information asymmetry leaves consumers in a disadvantaged position, making it difficult for them to tell the value of the targeted goods or services and then to make a decision that meets their needs. It also leads to a large number of inefficient transactions and impedes market development. In the legal relationship of online transactions, consumers' informational disadvantage becomes increasingly evident. Consumers can only access information about a product through advertisements and pictures uploaded by the business operators, which leads to dependency on business operators completely for necessary information.

Second, consumers have a weaker negotiating power. On the one hand, with rapid development in the market economy, the financial capacity of business operators who provide goods or services has continually been strengthened and business scale has continually grown. Departments responsible for handling consumer disputes have been established with professionals. Their absolute advantage in human resources, financial resources, and energy becomes evident once there is a consumer dispute (Wang, 2010). On the contrary, as natural persons, individual consumers purchase a limited amount of goods, which is negligible compared to the massive number of small transactions conducted by business operators. Due to such a gap in negotiating powers, consumers are often discriminated against or even maliciously infringed by business operators. The negotiating power of consumers is extremely behind that of business operators. On the other hand, business operators often use standard form contracts or transactional terms to deal with massive transactions in a short term. To maximize their benefits, some unscrupulous business operators draft many unfair terms in favor of themselves, to the detriment of consumers, in the standard form contracts. In addition, during the negotiation, consumers can only decide whether to enter into the contract with no freedom to add, amend or delete any content of the contract. Hence, the true will of consumers can hardly reflect.

Third, consumers are in a disadvantaged position when protecting their rights. On the one hand, due to the lack of legal knowledge and means of evidence collection, consumers often have difficulties in producing evidence while protecting their rights. When customers' legal rights are infringed, as they are unable to provide valid evidence to support their claims, they have no choice but to bear the negative legal consequences of not being able to prove their claims, making it difficult to obtain effective judicial remedies. On the other hand, the costs of consumer rights protection are high, requiring a large amount of human resources, financial resources, and energy. As natural persons, individual consumers often have very limited help and resources. In particular, in circumstances where consumers select to claim damage through litigations, they often end up with bearing the losses and giving up their rights because of the high costs. On the contrary, the professional legal teams hired by business operators are more professional in terms of both skills and legal expertise, compared to most consumers (Zhang, 2017). For consumers who take the initiative to protect

their rights in consumer disputes, it is difficult to compete with large commercial organizations (Peng, 2017). In addition, there are few provisions regulating online consumers' rights to bring a lawsuit in our legal system, which brings more barriers to them when seeking judicial remedies and makes consumers' disadvantaged position in protecting rights more evident.

To sum up, analysis of the legislative purpose of the New *Consumer Law* is the basis of indentifying the status of a consumer. Consumers are disadvantaged in access to information and weaker negotiating power in protecting their rights, for which the legitimate rights and interests of consumers in transactions are often infringed by unscrupulous business operators and are difficult to protect. This often leads to an obvious imbalance between business operators and consumers. Hence, legislators did not apply the traditional civil law criteria for compensation—actual damage, when drafting the *Consumer Law* but introduced a punitive damages mechanism to correct the imbalance between consumers and business operators to a certain extent (Li, 2016). Whether for legal interpretation or theoretical discussion, the scope of consumers in the new *Consumer Law* should be defined based on the disadvantaged position over the business operator in the transaction. If the requirement of being the disadvantaged party of the consumer contract is not fulfilled, that person should not be recognized as a consumer under the new *Consumer Law*, no matter the purchase is “for the needs of daily consumption” or not.

3. Practical Dilemma of Deciding Whether a Purchase Is Made “for Daily Consumption Needs”

Article 2 of the new *Consumer Law* defines the scope of application of the law, but does not clearly define “consumer” (Liu & Wei, 2017). Current theoretical research and judicial practice generally determine the consumer identity of people who knowingly buy fake products based on whether the purchase is made “for daily consumption needs”, but there are a number of practical difficulties in the application of this criterion.

First, it is difficult to define “for daily consumption needs”.

Using “for daily consumption needs” as the criterion, the academics and practitioners have divided opinions, or even opposite views, regarding whether people “who knowingly buy fake products” should be protected under the new *Consumer Law*. People who disagree believe that people “who knowingly buy fake products” do not purchase goods or services for daily consumption needs (Tian, 2022), and therefore they are not protected under the new *Consumer Law*. As Prof. Yang Lixin said, people who knowingly buy fake products are definitely not consumers, because they do not satisfy the condition of purchasing and using the goods for daily consumption needs. It would be legally inconsistent and theoretically unconvincing to directly recognize people who knowingly buy fake products as consumers (Yang, 2017). Prof. Liang Huixing believes that applying Article 49 of the new *Consumer Law* to protect those who knowingly

buy fake products conflicts with the legislative intention of Article 2 which emphasizes the purchase of goods for daily consumption needs, and therefore it is incorrect (Liang, 2001). People who agree believe that people “who knowingly buy fake goods” are purchasing “for daily consumption needs” and they should be protected under the new *Consumer Law* (Sun, 2017). As Prof. Wang Liming said, even if a person knowingly buys defective goods, that person’s consumer identity should not be denied, as long as the goods are not for selling or being re-traded on the market (Wang, 2002). Prof. Xu Jianyu stated that whether a purchase is made for daily consumption needs is reflected by objective purchasing behavior. As long as the buyer does not use the goods or services purchased to generate profits, the purchase should be treated as for daily consumption needs and the person as a consumer (Xu, 2001). Prof. Ying Feihu pointed out that it is necessary to grant people who knowingly buy fake products the right to seek punitive damages to further crackdown on counterfeit products, given the government’s ability to deal with counterfeits, the development of public welfare, the ubiquity of fake goods, the proportion of honest market entities, and severity of fraud against consumers, etc., as well as how the above factors might change (Ying, 2019).

Second, the judicial applications of “for daily consumption needs” are inconsistent.

There is confusion in the method and standard for determining “daily consumption needs” amongst courts. Similar cases sometimes have different judgments (Zhang, 2009), which has seriously undermined judicial authority and stability. For example, in the appeal case of Shang Qingfeng v.s. Henan Hometown Taste Trade Co. for a dispute over a purchase and sale contract, the court of first instance held that Shang Qingfeng did not meet the requirement of buying for daily consumption needs and excluded him from the protection under the *Consumer Law* on the grounds that he led a notary to notarize the entire purchase process and later hired a professional institution to test the goods in question. The court of second instance, however, made a completely different decision, recognizing Shang Qingfeng’s identity as a consumer on the grounds that Hometown Taste had not submitted favorable evidence to support the claim that Shang Qingfeng made the purchase not for eating but using the lawsuit as a means of profit (Wenshu Court, 2020). Another example: Zhou Zhibin v.s. Shenzhen Aoxiong Supply Chain Company Limited for a dispute over a purchase and sale contract, the court found that the plaintiff had filed 23 similar civil cases with the court, which shows that the plaintiff did not purchase the products in question for daily consumption needs, but for obtaining high compensation through malicious litigations (Wenshu Court, 2017). The purchase should be treated as the behavior for generating profits, and the plaintiff should, therefore, be excluded from the protection under the *Consumer Law*.

Third, the method of determining whether “for daily consumption needs” is defective.

Under the same legal system, there are great different understandings of the method of determining “whether a purchase is made for daily consumption needs”, and judicial applications also differ. The reason is that the determination of whether “for daily consumption needs” has its own inherent defects, and it is difficult to define accurately. Firstly, motives are hidden in human beings’ minds, and it is difficult to tell the true motives of people “who knowingly buy fake products” from their behaviors (Jiang, 2006). Moreover, there is usually a time gap between a consumer dispute and the purchase, and it is difficult to trace back the motive of the buyer afterwards (Ma, 2015). In addition, unless the buyer admits it, usually there is no way to prove whether he or she purchased the goods or the services for daily consumption needs. For example, natural person A bought an apartment as an owner-occupied property after getting married. However, after the purchase was completed, he decided to resell the apartment, because he broke up with his fiancée. When reselling the apartment, the price of that skyrocketed, so he decided to rent it out to obtain rent while waiting for the increase in the property value as an investment. It is difficult to assess precisely what behavior of him is for daily consumption needs as he changed his motives for purchasing the property several times during the whole purchase process (Li, 2016). And even if a judge makes a judgment on the motive of a person “who knowingly buys fake products” based on rules of thumb, it remains difficult for the judge to restore or reproduce the buyer’s motive as the judge’s judgment is not purely objective judgement due to the limitations of human cognition. Finally, there is no necessary and unique link between purchasing a product “for daily consumption needs” and one of the legislative purposes of the new *Consumer Law* to protect “consumers who are in a disadvantaged position”. The state interferes in transactions between business operators and consumers by legal means because the market alone cannot change the disadvantaged position of consumers during deals. If we stick to the “consumer motive theory”, barriers will be created to impede the diversification of people’s economic lives (Ma, 2015).

4. Reversal of Position under the New *Consumer Law*—The Theoretical Grounding for the Denial of the Consumer Identity of People “Who Knowingly Buy Fake Products”

China’s new *Consumer Law* aims to protect consumers that are in a disadvantaged position, compared to business operators in transactions. To decide whether people “who knowingly buy fake products” should be protected under the new *Consumer Law*, it is necessary to look into such buyers’ position in transactions. People who knowingly buy fake products are continuously and systematically engaged in buying counterfeit goods or even make a living by doing it. Their position in the transaction is significantly different from the disadvantaged position of ordinary consumers.

Compared to business operators, people who knowingly buy fake products are not disadvantaged because:

First, they are not in a disadvantaged position in terms of financial capacity. In recent years, large professional organizations have emerged amongst people who knowingly buy fake products. There is a trend that people even make it their career (Xiong, 2017). It can be seen in the following aspects: firstly, companies are established for this purpose. People who knowingly buy fake products found professional consulting firms or commercial firms to deal with fake product fights. Secondly, websites focusing on protecting consumer rights against fake products are established. Thirdly, large professional fake-fighting teams are formed (LACSC, 2013). Work and responsibilities are clearly assigned to team members, including purchase, making a claim and acting in court. They also make plans for specific areas and specific types of fake products (Hu, 2009). The financial gap between people who knowingly buy fake products and business operators continues to narrow down or even vanish. When it comes to some small businesses or companies, people “who knowingly buy fake products” may even have a stronger financial capacity, and are in a relatively stronger position. For example, Wang Hai, a pioneering fighter against counterfeits in China, already has four companies under his name specializing in professional fake fighting. His team has over 30 members in Beijing, Tianjin, Nanjing, and Shenzhen with an annual expenditure of over RMB 4 million (Hu, 2016).

Second, they are not disadvantaged in terms of access to information. People who knowingly buy fake goods usually have a better understanding of the physical property, production process, sanitation, and safety of their targeted products or services. They are capable of identifying a product’s problems. To a certain degree, people who knowingly buy fake products obtain richer knowledge and better skills, compared to some business operators. In addition, before the purchase, they will make full use of their knowledge and skills to tell whether the product is fake, improving the accuracy of their fake-fighting efforts (Xiao, 2015). In terms of access to information, the positions of business operators and people who knowingly buy fake goods are reversed. In judicial practices, some people who knowingly buy fake goods might have more information on their target products than judges (Gao, 2021). For example, in *Huang Xiaoping v.s. Changchun Shilu Deer Industry Co., Ltd., & Zhejiang Tmall Network Co., Ltd.* for a dispute over a purchase and sale contract, the plaintiff claimed that the broken *Ganoderma lucidum* spore powder was not included in the “List of Goods that are both Food and Medicine” (Wenshu Court, 2015). As a Chinese herbal medicine, it can only be used as a raw material for the production of medicine or health supplement, but not for the production of ordinary food. Hence, the defendant was suspected of processing unlicensed and unsafe food using broken *Ganoderma lucidum* spore powder, which is not allowed to be used as a raw material for ordinary food production. Based on the “Reply on Problems with Broken *Ganoderma lucidum* Spore Powder” from the General Office of the National Health and Family Planning Commission to the General Office of China Food and Drug Administration, as well as the “Notice on Inves-

tigating and Handling Illegal Production and Selling of Products Containing Broken *Ganoderma Lucidum* Spore Powder” issued by the General Office of the China Food and Drug Administration after receiving the reply, the court decided that the defendant knew that the broken *Ganoderma lucidum* spore powder that is sold as prepackaged food had neither health food approval numbers nor production license numbers for ordinary food products, but still sold the products in question. This violated Article 42(8) of the *Food Safety Law of the People’s Republic of China (2009 version)* and should be regarded as the sale of food products that did not meet food safety standards. Hence, the advantageous position of those who knowingly buy counterfeits, in terms of information access, is evident.

Third, they are not disadvantaged, in terms of negotiating power. People “who knowingly buy fake products” has professional knowledge and the ability to distinguish between genuine and counterfeit goods. Their decision to purchase fake products is made based on their true intention without being misled by business operators (Li, 2016). Their initial and ultimate purpose is to obtain civil compensation that is several times the actual purchase price of the goods with the help of the mandatory provisions in the law (Wang, 2010). For example, Huang Yong, the first fake products fighter in Chengdu, negotiated by himself with over 100 radio stations over false advertising claims many times. He was extremely tough in the negotiation process and eventually obtained over RMB 2 million in claims from the radio stations. People who knowingly buy fake products are equipped with rich knowledge about products and protecting consumer rights. Once they have gathered effective evidence to prove that a business operator’s goods or services have quality problems, are a fraud, or have other problems that can be used to claim compensation, they often behave strongly in the negotiation process with business operators. They might threaten to report or complain to administrative departments, or even extort or blackmail business operators by means of media exposure or banners, forcing “disadvantaged business operators” to pay high compensation.

Fourth, they are not disadvantaged in terms of the capability to protect their rights. People who knowingly buy fake products mainly protect their rights by filing a complaint and sometimes through lawsuits to obtain compensation. They report to administrative and law enforcement departments just like ordinary consumers, but their complaints are different from those of genuine ordinary consumers. Their complaints have the following unique features: firstly, they have sufficient evidence. They are generally good at using various means to collect and protect evidence, and have prepared sufficient evidence before filing a complaint. In addition, they are familiar with the laws and regulations. People who knowingly buy fake products are generally familiar with the relevant laws and regulations, and have studied and used the laws involved in their complaints. Finally, they use complaints and reports as a “compensation tool”. They put pressure on business operators by filing complaints or reporting to relevant

administrators. Once business operators compromise and pay them a reasonable amount of compensation, then it does not matter to people who knowingly buy fake goods whether the wrongdoer is administratively investigated or not. They even agree to withdraw their application for reconsideration or their lawsuit. In the grey areas of the law, people who knowingly buy fake products take advantage of state administrative and judicial resources to maximize their own profits.

5. Why We Deny the Consumer Identity of People “Who Knowingly Buy Fake Products”

There are two characters, though knowingly buying fake has enhanced the consumer goods market environment to some extent under the punitive damages mechanism. Those “who knowingly buy fake products” should be excluded from the protection under the new *Consumer Law* because:

First, it would be hard to protect the personal safety of people who knowingly buy fake products. The inclusion of people “who knowingly buy fake products” into the protection under the *Consumer Law* can fill the regulatory gap to some extent, and will enhance ordinary consumers’ awareness to recognize fake products. However, few people have paid attention to the safety risk for people who knowingly buy fake goods for punitive damages. For example, Wang Hai, “the first person fighting against fake products” never took off his signature sunglasses. Huang Lirong, a famous fake products fighter, was beaten to death when he was hired to investigate the Forbidden City Royal Hospital. We can view news about that professional fake products fighter was beaten by a merchant when he was claiming compensation for the fake goods he bought. In daily life, there are many incidents where the personal safety of people who knowingly buy counterfeit goods is threatened and even infringed. How to guarantee the personal safety of people “who knowingly buy fake products”, a problem arising from the alienation of the punitive damages mechanism (Chi, 2020), still remains uncertain from social, moral and legal perspectives. The inclusion of people “who knowingly buy fake products” under the protection of the new *Consumer Law* may lead to a challenge to the protection of their human rights and create hidden dangers to society’s stability.

Second, it may take up public resources and create more opportunism risks. On the one hand, people “who knowingly buy fake products” generally use the theory of fraud in civil law for seeking remedies after purchase. They use public judicial resources for personal profits, taking up a large amount of limited administrative and judicial resources and causing a serious negative impact on market supervision. On the other hand, the act of people who knowingly buy fake products to fight against fake products to obtain punitive damages has gradually evolved into a profit-making means to target products which have easily detected problems and are easy to obtain compensation. It has created the risk of opportunism to a certain extent and has seriously deviated from the purpose of the punitive damages mechanism set up by the new *Consumer Law*. This

will undermine the social integrity system (Liu & Wei, 2017). Therefore, some scholars have claimed that encouraging people “who knowingly buy fake products” to help address the problem of counterfeits is like encouraging entrapment, obtaining evidence by torture, and stealing gambling money to combat gambling. Obviously, such things do more harm than good (Guo, 2015).

Third, more burden will be placed on business operators if the application scope of the new *Consumer Law* is deliberately expanded. The *Consumer Law* protects disadvantaged consumers in transactions. If people who knowingly buy fake goods are recognized as consumers, the scope of application of the law will be expanded. On the one hand, as people who buy fake products tend to file a claim against the business operators as the defendant in punitive damages lawsuits, business operators need to invest a lot of human and financial resources to respond to such claims. Once small defects which do not affect the reasonable expectations of ordinary consumers are discovered by people who knowingly buy fake products, they may exaggerate the problem and claim a massive amount of compensation. As a result, business operators have to bear the heavy burden of litigation. This will affect the development of businesses and hamper the normal operation of the consumer goods market (Peng, 2017). On the other hand, if those who knowingly buy fake products are included in the scope of consumers under the new *Consumer Law*, it means the punitive damages mechanism is applicable to them. This will, to a certain extent, encourage their speculative behavior of using judicial resources to obtain undue benefits, thus undermining the safe and stable order of transactions in the consumer goods market (Guo, 2015).

Fourth, supervision by society cannot take effect. Currently, academics generally believe that “knowingly buying fake products” will play a positive role in improving the market environment and stopping businesses from unscrupulous profit-seeking behaviors and their expansion (Yang, 2017). They recognize “knowingly buying fake products” as a behavior that is beneficial to society and welcomed by the public, and claim that such behaviors can fill the regulatory gap to some extent when relevant departments cannot effectively control the manufacturing and selling of counterfeits. Some scholars even asserted that the exclusion of people who “knowingly buy fake products” from the protection under the new *Consumer Law* will connive and protect counterfeiters, but such an opinion can hardly be justified. The control of counterfeiting is definitely a public function and duty of government departments. Specifically, it is the duty of industrial and commercial administrative departments. The imposition of such duty on consumers is contrary to the modern concept of the rule of law, and we should avoid falling into the historical trend of solving social problems through movements led by the masses (Li & Chen, 2015). In addition, in everyday transactions, the initial and ultimate purpose of those who knowingly buy fake products are not to combat unscrupulous business operators or eliminate counterfeit goods by means of social supervision and government regulation, but to make a

profit through compensation from business operators and the compensation exceeds the cost of combating counterfeits. The wish of academics that knowingly buying fake products helps reduce fake goods in the market and crack-down on illegal business operators is almost impossible to come true when the motive and purpose of people who knowingly buy fake products are to gain profits (Hu, 2009).

6. Still Need to Be Protected: Paths Finding to Protect People Who Knowingly Buy Fake Products

From the perspective of practical law, whether or not people who knowingly buy fake products fall within the protection under the new *Consumer Law* should be decided by the legislation. From a legal interpretation point of view, neither the arguments for nor against the protection of people who knowingly buy fake products under the new *Consumer Law* can find a reasonable basis to deny the other side's view completely, because the controversy is detached from the history of consumer protection laws, and the protection of consumers is separated from the context of formulating consumer protection laws. They overlook the legitimacy of the act, and as a result, cannot prove their own points or convince others. The solution to this problem lies not only in rigorous logical analysis, but also in empirical investigation. By re-observing the consumption process of people "who knowingly buy fake products", it can be found that those buyers are not disadvantaged compared to business operators in terms of negotiating power, access to information, and even financial capacity. They are not disadvantaged consumers and do not fall into the category of consumers protected by the new *Consumer Law*. However, as a civil subject, their legitimate rights and interests should still be effectively protected by the relevant laws.

This paper proposes the following suggestions for the protection of those who knowingly buy fake products.

First, general civil contracts laws should be applied to protect people "who knowingly buy fake products". The nature of the contract entered into by people knowingly buy fake products" and business operators is a purchase and sale contract. General provisions on contract cancellation, contract termination, and liability for breach of contract in the *Contract Law* can be applied. Such disputes can be handled like ordinary civil contract disputes. When a person who knowingly buys fake products suffers property or personal damage as a result of the goods purchased, he or she may seek compensation under the *Law on Product Quality* and may also request the producer or seller to bear tort liability under the *Tort Liability Law* (Liu & Wei, 2017).

Second, legalizing and standardizing the social role of people who knowingly buy fake products. Article 6(2) of the new *Consumer Law* states that, the State encourages and supports social supervision from all organizations and individuals over infringement upon lawful rights and interests of consumers. It is recommended to include people who knowingly buy fake products as social super-

visors, and to let them perform the corresponding duty of social supervision (Xiao, 2015). The supervisory authorities should establish a special fund and a reward system. People who knowingly buy fake products and consumers should be rewarded according to certain standards if they report business operators' fraudulent behaviors. The scope, amount, and reasonableness of the reward should also be improved. On the one hand, as social supervisors, people who knowingly buy fake products can provide information on lawless business operators. State administrative authorities can seek compensation for those people or authorize consumer protection organizations to seek compensation. This can protect those people from unlawful infringement and criminal risks caused by improper claims. On the other hand, the participation of people "who knowingly buy fake products" in social supervision can urge unscrupulous business operators to operate in good faith and promote the stability of the consumer goods market, and these are beneficial from a social perspective (Peng, 2017).

Third, tougher legal punishments should be imposed on business operators for selling counterfeits. It is recommended that business operators that sell fake products should receive harsher punishments. For example, Article L213-1 of the *French Consumers Code* states that any fraud or attempted fraud against a contracting party, whether or not the subject is a party to the contract and regardless of the means and methods used, even through a third-party intermediary, might face imprisonment of up to two years and a fine of up to €37,500, or either one of them. Article L213-2 of the same Code provides two aggravating circumstances that double the penalty stipulated in the previous article (Lin, 2016). For business operators that sell fake products and commit fraud, or attempt to fraud consumers, it is recommended to do the following two things once there is conclusive evidence to verify their breach. On the one hand, the administrative penalties for them should be increased. Fines, as the main form of punishment, are recommended to be set at a minimum amount of RMB 500,000. On the other hand, the criminal liability of business operators should be clarified. It is recommended that imprisonment of up to two years be set for business operators who maliciously sell counterfeits.

Fourth, legal constraints on the unlawful conduct of people who knowingly buy fake products should be clarified. In the process of a transaction, it is necessary and practical to protect disadvantaged consumers in order to maintain fairness and justice in the market. However, the new *Consumer Law* mainly protects consumers through right-granting provisions, with very few obligations on them. In the legal system for the protection of consumer rights and interests, emphasis should be placed on balancing the interests of business operators and consumers. To protect the legitimate rights and interests of innocent business operators and maintain market order, Chinese law shall incorporate strict punitive measures to regulate unscrupulous people who knowingly buy fake products, extort and blackmail law-abiding business operators, and make malicious

claims in the name of fighting against counterfeits (Shang, 2017).

7. Conclusion

In this paper, the author argues that all organizations and individuals that purchase counterfeit products ought to be protected by the law, not always the *New Consumer Law*. The legislative purpose of the *New Consumer Law of China* is to protect disadvantaged consumers. There are practical dilemmas of deciding whether a purchase is made “for Daily Consumption Needs”, and the legislative intention of the new *Consumer Law* for protecting disadvantaged consumers is not taken into consideration. Considering protecting the personal safety of those who knowingly buy counterfeit goods and balancing the interests between consumers and business operators, the consumer identity of those who knowingly buy fake products should be denied under the new *Consumer Law*. However, as civil subjects in Chinese market, their legitimate rights and interests should still be effectively protected through general civil contracts laws, legalizing and standardizing the social role of these people, imposing strict punitive measures on business operators for selling counterfeits and clarifying legal constraints on the unlawful conduct of people who knowingly buy fake products, etc.

Ethical Approval

This article does not contain any studies with human participants or animals performed by any of the authors.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- Canaris, C. W. (2006). *German Business Law* (Translated by Yang, J.). Law Press.
- Cao, X. Q. (2011). The Transformation of the Establishment Angles of Commercial Legal System: Taking the Protection of Financial Consumers as an Example. *Journal of Shanghai University of Finance and Economics*, 13, 26-33.
- Chi, Q. N. (2020). Study on the Application of Punitive Compensation of “Knowing and Buying Fake”. *Fujian Quality Management*, No. 17, 205-206, 170.
- Cui, J. (2013). *Comparative Study on East Asia Consumer Contracts Laws* (pp. 8-110). Peking University Press.
- Gan, Q. (2016). Recognition of the Legal Status of “Consumers”. *Political Science and Law*, No. 12, 114-115.
- Gao, Z. H. (2021). Judicial Determination and Logical Proof of Consumption Fraud. *Academia Bimestris*, No. 1, 158-166.
- Guo, M. (2015). Does “Knowingly Buy Fake Products” Protected by the Law of P.R. China on the Protection of Consumer Rights. *Contemporary Law Review*, 29, 69-72.
- Hu, J. B. (2016). *Professional Fake Hunters Use Private Interests to Protect Public Interests*. <https://www.toutiao.com/i6262442234663141889>

- Hu, J. Z. (2009). Reflection on the Phenomenon of “One More and One Less” in Consumer Rights Dispute Cases. *The People’s Judicature*, No. 5, 73-74.
- Jiang, Z. J. (2006). *On Consumer Relationship and Its Application* (p. 33). Ph.D. Thesis, China University of Political Science and Law.
- Jiang, Z. Y., & Ma, M. F. (2022). On the Applicative Definition of Punitive Compensation System. *Journal of Wuhan Metallurgical Manager’s Institute*, 32, 14-22.
- Legislative Affairs Commission of the Standing Committee of the National People’s Congress (LACSC) (2013). *The Legislative Background and Viewpoint of the Law of Consumer Rights and Interests* (p. 185). Law Press.
- Li, J. (2016). On the Logical Basis, Value Concept and System Building of “Knowingly Buy Fake Products”. *Contemporary Law Review*, No. 6, 82-88.
- Li, R. Y., & Chen, C. (2015). Analysis on Whether Punitive Damage Is Applicable to Buying Known Fake Product. *Law Science Magazine*, 36, 48.
- Liang, H. X. (2001). Interpretation and Application for Article 49 of the Law of the People’s Republic of China on the Protection of Consumer Rights and Interests. *People’s Court Journal*, No. 3, 29.
- Lin, X. D. (2016). Study on the Information Obligations Prior to Conclusion of the Consumer Contract. *Northern Legal Science*, 10, 93.
- Liu, B. Y., & Wei, Z. H. (2017). Buying Fake Intentionally: Theoretical Interpretation and Legal Application. *Legal Forum*, No. 3, 63-65.
- Lu, Q. (2014). On the Obligation to Disclose in the Consumer Protection Law: Comments on the No. 17 Guiding case by the Supreme People’s Court. *Tsinghua Law Review*, 8, 160.
- Ma, Y. D. (2015). Deconstruction and Reconstruction of Consumer Concept. *Law Review*, No. 6, 30-41.
- Peng, W. Y. (2017). The Legislative Regulation of Professional Fake Hunters. *Cognition and Practice*, No. 5, 43.
- Shang, D. D. (2017). An Analysis of the “Profit-Making” in the Fake Purchase. *Journal of Taizhou Polytechnical College*, 17, 28.
- Sun, Q. Q. (2017). Analysis of the Application of Punitive Damages in the Act of “Buying Fake on Purpose”. *Journal of Shanxi Politics and Law Institute for Administrators*, 30, 61.
- Tian, Y. (2022). Recognition and System Specification of the Whole Field of “Know-Fake-Buy-Fake”. *China Business & Trade*, No. 6, 53-55.
- Wang, L. M. (2002). The Concept of Consumer and Limits of Adjustment in the Law on the Protection of Consumer Rights and Interests. *Political Science and Law*, No. 2, 8.
- Wang, X. M. (2010). The Concept of Consumer in Chinese Consumer Protection Law. *Journal of Beijing Union University (Humanities and Social Sciences)*, 8, 77.
- Wenshu Court (2015). *Second Instance Paper of Civil Judgment No. 858 on Disputes between Huang Xiaoping and Zhejiang Tmall Network Co., Ltd. for a Dispute over a Purchase and Sale Contract*.
<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=4fb352123e794090b2cb7dbbcdb3c717>
- Wenshu Court (2017). *Second Instance Paper of Civil Judgment No. 6568 on Disputes over Seen Zhou Zhibin and Shenzhen Aoxiong Supply Chain Co., Ltd. Sales Contract Dispute Case*.
<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=>

[e15bd6c5063d4e19aa5fa858015bff8e](https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=3125abf450044f45b0aeb9900c63f45)

- Wenshu Court (2020). *Final Instance Shang Qingfeng V. Henan Hometown Flavor Trading Co. Ltd., Paper of Civil Judgment No. 9505 on Disputes over Sales Contracts*. <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=3125abf450044f45b0aeb9900c63f45>
- Xiao, F. (2015). On the Anti-Contract and Overcoming of the Behavior of Buying Fake. *Public Administration & Law*, No. 1, 108.
- Xiong, B. W. (2017). The Form and Function of Law: Analysis of “Knowingly Buy Fake Products” Cases. *Peking University Law Journal*, 29, 303.
- Xu, J. Y. (2001). Study on Perfecting of Consumer Legislation. *Zhejiang Academic Journal*, No. 1, 152.
- Yang, L. X. (2017). On the Scope of Liability of Punitive Damages for Goods Fraud. *Jiangnan Tribune*, No. 1, 114-118.
- Ying, F. H. (2019). Forbid or Restrict: Research on the Regulation of Knowing and Buying Fake. *Law Review*, 37, 73-78.
- Zhang, J. (2017). The Construction of Vulnerableness and Balance Mechanism of Air Travelers. *Academics in China*, No. 2, 180.
- Zhang, Y. Z. (2009). The Theoretical Self-Examination and System Restore for the Dominant Position of Consumers. *Studies in Law and Business*, 26, 96.
- Zhao, Y. H. (2020). *As an Ambitious Person, Wang Hai Earned Ten Million after 25 Years Counterfeits Fighting*. <https://finance.ifeng.com/c/82JR4qYv80>