

# Criminal Law Regulation of Professional Anti-counterfeiting Activities

Juzhong Zeng

Law School of Beijing Normal University, Beijing 100875, China

**Abstract:** Professional anti-counterfeiting is a unique phenomenon in China, which has triggered controversy over whether the professional anti-counterfeiting group has the right to fight counterfeiting. The government's attitude towards the professional anti-counterfeiting has shifted from being supportive to disapproval. Reinterpreting the meaning of 'consumer' can provide a satisfactory resolution to the rights of professional anti-counterfeiting. The 'right to combat counterfeiting' cannot exceed its proper boundaries, and illegal anti-counterfeiting activities should be regulated by law. Also, acts that seriously infringe upon the legal interests of others should be regulated by criminal law.

**Keywords:** Professional anti-counterfeiting; Consumers; Criminal acts

## 1 Introduction

According to the new social defence theory, all acts that may have dangerous risks or general risks should be taken regulated measure, even if the actor is not guilty and cannot be punished. Thus, the behaviour of society to counter and prevent counterfeit products from production, supply of raw materials to product sales is an act of combating counterfeiting, referred to as anti-counterfeiting.

Wang Hai is the first Chinese professional anti-counterfeiter, but his anti-counterfeiting acts are not for the purpose of maintaining market justice, but to obtaining compensation through continuous anti-counterfeiting acts. Wang Hai has established a professional anti-counterfeiting team (about 60 people) with independent testing equipment. The team earns tens of millions of yuan in revenue every year through anti-counterfeiting, but the specific profit is unknown. In China, professional anti-counterfeiting represented by Wang Hai is a common reality, of which the features are: first, the subjects involved exceed the scope of 'consumers' stipulated in the Consumer Protection Law of the People's Republic of China (hereinafter referred to as the Consumer Protection Law); Second, knowingly buying fakes, that is, knowing that the business operator is selling fake or inferior products or services but still buying them; Third, the anti-counterfeiting acts can either involve high compensation

to realize economic profits, or exposing the illegal behaviour of operators, forcing the business operators and their peers in the same market to suspend business for rectification, accept punishment or suffer losses.

For a long time, the government has supported professional anti-counterfeiting. In the early 1990s, the vast majority of the Chinese people, who had already met the needs for basics, began to yearn for a life of 'eating well, dressing well, and using good stuff'. It had become a fashion to buy foreign goods whose prices are unreasonable to many people, so low-cost counterfeiting has become common, but fake and shoddy goods have also become rampant. People had expected 'high quality but low price' products, but what they encountered was physical, mental, and financial damage. In the vast territory, it was almost impossible to find consumers who had not been victims of fake and inferior goods. Society has entered an era of 'mutual harm'. Therefore, 'everyone is calling for a crackdown on counterfeits' has become a common and rising sentiment among the general public. Counterfeit manufacturers and retailers were like street rats. Whatever means citizens used to protect their rights and fight against counterfeiting, they tended to get the understanding and support from the public, and often the support from the government.

Some people found that professional anti-counterfeiting act could also be a way to make profit, so they

---

joined the ranks of professional anti-counterfeiting activities. Some walked on the streets in groups of three or four, specifically targeting small businesses, restaurants, and supermarkets; some had a clear division of labour, specifically looking for large supermarkets and large enterprises, using their professional knowledge to discover counterfeit goods; and some specifically went to remote villages to discover counterfeits, shoddy goods, expired food and medicines. Once they have found counterfeits, they usually buy them in large quantities and then file a claim for compensation. The amount of the claim usually exceeds the double compensation range stipulated in the Consumer Protection Law. After the revision of the Consumer Protection Law in 2013, the ‘commitment transaction’ behaviour in trading practices was affirmed, which requires business operators to fulfil their promises to consumers and pay high compensation for any counterfeits, which can go up to ten times of the original price of the goods.

Recently, Regulations for the Implementation of the Consumer Protection Law of the People’s Republic of China [2024] (hereinafter referred to as the Regulations), art 12, stipulates that: If an operator provides goods or services through commercial publicity, product recommendations, physical displays, or notifications, statements, store notices, etc., and makes promises on the quantity, quality, price, after-sales service, and liability of goods or services, it shall fulfil the contents of its promises to consumers who purchase goods or receive services. Faced with the temptation of huge profits, some professional anti-counterfeiters have begun to use all means possible and have intensified their efforts to ‘fight counterfeiting’, such as fabricating facts, blackmailing, making a fuss, and organizing people to cause disturbance at business premises, which has led to a gradual change in the government’s attitude towards professional anti-counterfeiting.

The General Office of the Supreme People’s Court issued a letter [2017] No. 181, ‘Reply to Proposal

No. 5990 of the Fifth Session of the Twelfth National People’s Congress’ (Excerpt 3): From the current judicial practice of consumer rights protection, the behaviour of knowingly buying counterfeit goods has a tendency to become commercialized. There are increasingly more professional anti-counterfeiters and companies (groups) that fight against counterfeiting. Their motivation is not to purify the market, but to use punitive damages to make profits for themselves or to blackmail businesses. Moreover, some people have already won the lawsuit against a certain product and received compensation, but then purchased the product again in order to make another profit. The above-mentioned behaviour seriously violates the principle of integrity, ignores judicial authority, and wastes judicial resources. This governance model of punishing evil with the evil should not be supported. Therefore, considering the particularity of food and drug safety issues and the specific circumstances of existing judicial interpretations and judicial practices, it is sensible to now consider gradually restricting the profit-making anti-counterfeiting acts in situations other than purchasing food and drugs. Influenced by public opinions, some regions have even brought individual professional anti-counterfeiters to justice and treated them as criminals <sup>[1]</sup>.

In 2024, more than a dozen cities in mainland China, led by the government, issued documents to regulate professional anti-counterfeiting. Some law enforcement agencies directly expressed their opposition to professional anti-counterfeiting. The public also expressed two views on professional anti-counterfeiting: The first one is strong condemnation, believing that the current economic downturn has already made it difficult for both individuals and companies to survive, while professional anti-counterfeiters use the excuse of protecting their rights to seize the slightest flaw in the behaviour of operators and make exorbitant compensations to gain illegal profits, seriously damaging the legitimate rights and interests of businesses and disrupting the market order. The other one is understanding and support, believing that business

---

operators who manufacture and sell counterfeit and shoddy goods or provide false services are the culprits for disrupting market order, especially in the food and drug sectors, which seriously damage the physical health and financial interests of citizens. If there were no professional anti-counterfeiters who ‘stand up and speak out’, in the long run, the Chinese nation would not only be unable to protect its next generation, but would also lose face in national and social interactions.

In conclusion, whether professional anti-counterfeiters have the right to fight against counterfeiting, should their anti-counterfeiting behaviour be supported in general, and how to regulate professional anti-counterfeiting behaviour is a question worth investigating.

## **2 Do Professional Anti-counterfeiters Have the Right to Fight Against Counterfeiting?**

The Consumer Protection Law confirms nine rights, which are: 1) The right to safety. That is, the right to personal and property safety when purchasing, using goods and receiving services; 2) Right to know. That is, the right to know the true situation of the goods; 3) Right to choose. That is, the right to freely choose goods; 4) Right to fair trade. That is, the right to obtain fair trading conditions such as quality assurance, reasonable prices, and correct measurements; 5) Right to claim. That is, the right to obtain compensation according to law when personal or property damage occurs due to the purchase, use of goods or services; 6) Right of association. That is, the right to establish a social group to protect its own legitimate rights and interests in accordance with the law; 7) Right to obtain knowledge. That is, the right to obtain knowledge about consumption and consumer rights protection; 8) Right to be respected. That is, the right to have personal dignity and national customs and habits respected; 9) Right to supervise. That is, the right to supervise goods and services and the work of protecting consumer rights. The subject of these rights is all clearly defined as ‘consumer’.

Article 55 of the Civil Code of the People’s Republic

of China (hereinafter referred to as the ‘Civil Code’) stipulates punitive damages liability:

If an operator engages in fraudulent behaviour in providing goods or services, he shall, at the request of the consumer, increase compensation for the losses suffered by the consumer. The amount of increased compensation shall be three times the price of the goods purchased by the consumer or the cost of receiving the service. If the amount of increased compensation is less than RMB 500, the actual compensation shall be RMB 500. If otherwise provided by law, it shall be in accordance with such provisions.

Please note that the right holder determined by this article is still the ‘consumer’. Therefore, the definition of ‘consumer’ becomes an important issue.

Some people believe that since Article 2 of the Consumer Protection Law stipulates that:

The rights and interests of consumers who purchase, use goods or receive services for their consumption needs shall be protected by this Law; if not provided for in this Law, they shall be protected by other relevant laws and regulations.

Consumption means use, including eating, wearing, and utilizing, so as the name suggests, the consumer refers to the final user of the goods. Baidu Encyclopaedia even explains it as ‘an individual or sole user of the final product who purchases various products and services for personal consumption purposes’. According to the Supreme People’s Court of Issuing the Sixth Group of Guiding Cases, No.23<sup>[2]</sup>, it defined consumer as a concept that differs from the seller and producer. As long as an individual purchases and use goods or accept services for personal or household purposes, rather than for production or other professional activities, then the individual should be recognized as a consumer. In addition, the acts fall within the scope of the CPL of PRC.

Article 1177 of the Civil Code stipulates:

If the legitimate rights and interests are infringed, the situation is urgent and the protection of state agencies

---

cannot be obtained in time, and failure to take immediate measures will cause irreparable damage to the legitimate rights and interests, the victim may protect his legitimate rights and interests. Reasonable measures such as detaining the property of the infringer shall be taken to the extent necessary; however, the relevant state authorities shall be immediately requested to handle the matter. If the victim takes inappropriate measures that cause damage to others, he shall bear tort liability.

This article gives citizens the right to implement self-help actions to achieve right of private relief<sup>[3]</sup>. This right can be exercised when citizens encounter false measuring instruments such as 'ghost scales', counterfeits and shoddy goods. Please note that the subject of rights identified in this article is the 'victim' and is not limited to consumers. The semantic meaning can include professional anti-counterfeiters. Knowingly purchasing counterfeits does not mean that the purchaser knows that he may be 'victimized' and gives up the right to pursue tort liability against the counterfeiter. The principle of victim commitment or self-help does not apply. On the contrary, it should be understood that the victim is willing to take the initiative to face the tort damage and realize the claim right.

The author of this presented article believes:

### **1.1 Consumer rights should not be interpreted merely as individuals' rights**

Consumption refers to the process of using products and services to meet people's various needs. It is the terminal link of social reproduction, and its subjects include natural persons and legal persons. The consumption of legal persons is the basis of social reproduction. While consuming daily necessities, production equipment and facilities, legal persons not only stimulate social reproduction, but also directly create new consumer products to meet social needs. As for whether their consumption motives are noble or profit-driven, it does not affect their provision of new consumer products to others and to society while acting as consumers of others. Natural persons' consumption is at

the end of social reproduction. Although it generally does not provide new products to society, its main function is to meet the needs of daily life while stimulating enterprises to produce more and better consumer goods, increase social wealth and government fiscal revenue, and achieve more social welfare under a good welfare system. As science and technology develop, the waste generated by natural persons' consumption can also provide raw materials for the production of new consumer goods. For example, construction waste can be recycled into renewable resources to produce cement, bricks, manhole covers, etc. Domestic waste can be used to generate electricity or produce poultry and livestock feed, recycled plastics, cardboard, etc. Similarly, whether the motivation for natural persons' consumption is noble or profit-driven does not hinder the consumption process itself or the production of recycled goods.

Although the current Consumer Protection Law is mainly formulated based on the standpoint of natural person's consumption, at least the consumption process of legal persons includes the living consumption of legal person employees. Disputes arising from the two types of consumption may not only be subject to the provisions of the Civil Code, but also to the Consumer Rights Protection Law. Therefore, the consumer rights, including the right to fair trade, the right to voluntariness, the right to know, the right to choose independently, the right to safety, the right to supervise, the right to sue and the right to claim compensation, clearly stipulated in the 'Consumer Rights Protection Law' cannot exclude legal person's consumption.

In fact, judging from the common sense and reality, whether it is a natural person or a legal person's consumption, when the purpose of paying for goods is to purchase and sell goods, it has obviously exceeded the scope of 'living needs' and is considered as a business behaviour rather than consumption behaviour. If there are problems with the purchased products, it is a contractual dispute and the debt obligation is a contractual liability

---

rather than a tort liability.

## **1.2 Motives and purposes are not considered in consumer rights**

Provided that the manufacturer or merchant conceals the truth, the buyer's behavioural motivation and purpose cannot be the determining factors of 'consuming' or 'right to consume'.

Knowingly buying fake goods, whether for the purpose of protecting rights or for profit, is a matter of consumer motivation and does not affect the consumer rights. According to the Consumer Protection Law, as long as the seller commits fraud, the judiciary should crack down on it. The law does not require consumers to be defrauded before they can be protected. For consumers, unwittingly buying counterfeits is a consumption behaviour, while knowingly buying is also a consumption behaviour. For example, one may buy some or even several batches of fake goods knowing that they are fake for the purpose of identification. Furthermore, as long as counterfeit goods continue to exist, whether being purchased by natural persons or legal persons, knowingly buying counterfeit goods and then seeking compensation is part of the consumer rights, and should be supported by the government. It would not make legal sense if consumer rights are protected only when buying counterfeits food and medicine, but not when buying other common commodities. If a legal person produces a product that is well-loved by consumers, but those who manufacture or sell counterfeit goods quickly launch low-priced counterfeits to drive the genuine goods out of the market, then both individual consumers and manufacturing companies can set up a special anti-counterfeiting team to protect their rights and seek compensation, which in fact is also protecting the rights of other consumers. If the judiciary strictly requires that protection be provided only to the victims of defraud, then when can counterfeit goods be driven out of the market? How can the rights of other consumers be effectively protected? If the judiciary only protects those who have

been deceived, doesn't that mean that the law only protects 'foolish' consumers but not 'smart' consumers? Doesn't that mean that even if consumers have improved their knowledge and discernment, they can only choose to tolerate and avoid fraud?

## **1.3 The consumer right naturally includes the anti-counterfeiting right**

The 'anti-counterfeiting right' is consumers' right to resist copyright infringement. It is not only morally necessary, but also legally necessary. The 'anti-counterfeiting right' here should not be interpreted as a generalized right, but should refer to the right to claim compensation as defined in the Consumer Rights Protection Law and the Tort Liability Law of the Civil Code. In other words, consumers have no right to destroy counterfeit factories or places where counterfeit goods are sold, nor do they have the right to post seals, slogans, make trouble or gather in groups at manufacturers or businesses to realize their anti-counterfeiting right.

The consumer right should not be restricted and interpreted as 'the right to use the purchased goods for purchaser's own use', otherwise it will unreasonably exclude the rights of the final beneficiary and the rights of those who knowingly purchase counterfeit goods.

Individuals may purchase goods for other people as a gift, so the goods are not purchased for their own use. Deliberately emphasizing that purchased goods must be used for 'personal use' is a restrictive interpretation of consumption and consumer rights. The inappropriateness of this is that it is easy to separate the purchasing behaviour from the using behaviour. For example, when the purchase receipt remains with the purchaser (gift giver) but the actual user (gift recipient)'s rights are violated, the actual user is excluded from the definition of consumer. Similarly, in the face of an infringement by merchants, the purchaser might also be excluded from the definition of consumer as he did not use the purchased goods.

Some people may say that those who knowingly

---

buy fake products but do not actually use them will not have their physical and mental health harmed, so they are not victims of infringement and therefore have no right to combat counterfeiting. This issue is not difficult to explain in legal terms: First, the production and sale of counterfeit products are faced by the public, natural persons and legal persons. The production of fake and shoddy products or their placement in sales venues has already completed the preparatory acts for infringement. Only the purchasing behaviour can make the infringement concrete, actual, and accomplished. Therefore, anyone who pays the 'price' for goods is a consumer, and becomes a victim of infringement when counterfeit and shoddy goods are manufactured and sold; Second, infringement does not only involve personal physical and mental damage to citizens, but financial damage is also one of the consequences of infringement. Especially when rights cannot be protected and claims cannot be made, infringement becomes a foregone conclusion. Therefore, it is appropriate to interpret that the infringement is completed when the property and goods are cleared. The physical and mental damage to consumers is merely the aggravated consequence of the infringement and is a consideration of the magnitude of the crime (the degree of infringement) rather than the nature of the crime (the infringement activity).

Therefore, it is logical to conclude that the purchaser and the actual user may both become the victims of the infringement when buying counterfeits and shoddy goods, and both have the right to combat counterfeiting and claim compensation. When the act of purchasing is separated from the act of using, the issue is not who has the 'right to fight against counterfeiting', but how to prove the 'anti-counterfeiting right'. It is a procedural issue rather than a substantive issue. Emphasizing the claim of 'self-use right' is actually confusing the procedural issue with the substantive issue.

Necessary restrictions on the "right to anti-counterfeiting"

The exercise of rights must have necessary restrictions, which is a question of the boundaries of rights. Rights cannot exist without boundaries. If the boundaries are blurred, the exercise of one's rights will easily infringe on the rights of others.

(1) Whether the seller is honest about the defects of the goods

The boundaries of the "right to anti-counterfeiting" are not the terminology of scholars, but are defined by laws, regulations, and social morality. The infringement of consumer rights generates a tort liability. The establishment of a tort liability requires that the infringer has subjective fault, including intention and negligence. When the infringer seeks to exchange consumers' financial property with counterfeit and shoddy goods, or conceals the truth and induces consumers to suffer losses, he is subjectively intentional; when the infringer should foresee or has foreseen that consumer behaviour may cause physical and mental health or property rights to be damaged based on the knowledge he knows, but still produces and sells counterfeit and shoddy goods, he is subjectively negligent.

In other words, if the manufacturer or merchant has clearly informed the consumer of the problems with the product and sells it at a low price as a "disposal product", it is difficult to say that they have subjective intention or negligence to infringe consumer rights, and it is difficult to identify it as an infringement. In this case, the consumer's knowledge of the product defects comes from the seller's honest disclosure, rather than a judgment based on consumers' own knowledge. Since the seller has no infringement behaviour, the "knowingly buying fakes" under this circumstance loses the basis of anti-counterfeiting rights and is suspected of violating basic integrity.

Finally, the primary boundary of the "right to anti-counterfeiting" is whether the seller has informed the truth about the defects of the product. For the seller, the seller has explained the truth about the product, unless it is

---

producing and selling toxic and harmful food or fake and inferior drugs, otherwise it is exempted from tort liability; for the buyer, consuming with knowing the defects of a product is a self-responsible behaviour, so the buyer bears the whole responsibility. If physical or mental health was damaged after consuming the defective product, the liability can only be attributed to the buyer.

(2) The criterion of reasonableness should be established in order to prohibit repeated punitive damages

The Supreme People's Court's Provisions on Several Issues Concerning the Application of Law in the Trial of Food and Drug Dispute Cases issued on March 15, 2014 stated: "If a dispute arises over food or drug quality issues and the purchaser asserts rights against the producer or seller, and the producer or seller defends that the purchaser knew that the food or drug had quality problems but still purchased it, the people's court will not support the purchaser." To be clear, The "Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Food and Drug Dispute Cases" revised on December 23, 2020 retains this provision and is still in effect. Even if a professional anti-counterfeiter purchases goods for the purpose of right protection and profits-making rather than for consumption, the court will consider whether the anti-counterfeiting helps to improve the legality and compliance of production and business operations; as long as the quantity of goods purchased are within individuals' reasonable daily use, the professional anti-counterfeiter will be identified as a consumer. This identification can not only promote honest business operations in the food and drug market, but also protect the rights and interests of consumers. However, professional counterfeiters are prohibited from obtaining punitive damages through repeated purchases. In 2021, the Supreme People's Court clearly stated that if the same consumer purchases the same or similar items of food that do not meet food safety standards within a short period of time, and files separate lawsuits, sellers will not bear repeated punitive damages

liability since such behaviour is essentially a split lawsuit and violates the principle of good faith<sup>[4]</sup>.

### **3 Criminal Law Regulation of Professional Anti-Counterfeiting Activities**

Article 27, Paragraph 2 of the Consumer Protection Law stipulates:

Complaints and reports must comply with laws, regulations and relevant provisions. Complaints and reports must not be used to seek improper benefits, infringe upon the legitimate rights and interests of operators, or disrupt the market economic order.

This provision contains two meanings: first, anti-counterfeiting can seek legitimate benefits, such as claiming compensation in accordance with the law; second, anti-counterfeiting must not be used to seek improper benefits, such as extortion, gathering to claim compensation or hiring others to use soft violence to force operators to pay compensation. The first meaning refers to the result, and the second meaning refers to the means. In summary, seeking legitimate interests should be based on legal means; it is not allowed to seek illegitimate interests even if the means are legal, and it is even more not allowed to seek illegitimate interests by illegal means.

Legitimate professional anti-counterfeiting behaviours are protected by law, and illegal professional anti-counterfeiting behaviours should be regulated by law. Among them, behaviours that are insufficient in administrative penalties should be restricted and punished by criminal law.

Article 49, paragraph 2 of the Regulations provides that:

If someone defrauds a business operator of compensation or blackmails a business operator by smuggling, switching, counterfeiting, tampering with the production date of goods, or fabricating facts, the provisions of Article 55, paragraph 1 of the Consumer Rights Protection Law shall not apply, and he shall be dealt with in accordance with the Public Security Administration Punishment Law of the People's Republic

---

of China and other relevant laws and regulations; if a crime is constituted, criminal liability shall be pursued in accordance with the law.

According to the provisions of the law and combined with practical experience, the illegal acts that need to be regulated by criminal law mainly involve the following aspects:

### **3.1 Demanding high compensation for illegal business practices**

This behaviour may be suspected of extortion, and there is a possibility to expand its application in practice, so special attention should be paid to the judgment rules determined by the highest judicial authority. According to Article 274 of the Criminal Law of the People's Republic of China (hereinafter referred to as the 'Criminal Law'), this crime refers to the act of threatening (intimidating) others for the purpose of illegal possession, demanding a large amount of company property or extorting money multiple times. Subjectively, the purpose is illegal possession, and objectively, threats or coercion are used to cause panic and fear in the heart of the victim, so the victim disposes of the property and hands the property to the perpetrator. According to article 6 in an interpretation, If anyone threatens or blackmails others and extorts public or private property on the grounds of handling online information by posting or deleting it on information networks, and the amount is large, or if the above-mentioned acts are committed multiple times, he shall be convicted and punished for extortion in accordance with Article 274 of the Criminal Law <sup>[5]</sup>. Generally speaking, even if the rights protection behaviour far exceeds the scope of reasonable claims, it is still considered as excessive rights protection behaviour and should not be elevated to criminal illegal behaviour. Case No. 509 of the Supreme People's Court established two adjudicative rules: although the amount of the claim was huge, it was based on a civil dispute, so it could not be determined as with the purpose of illegal possession; Reporting does not involve 'threat or blackmail', and it is a way to fight for

disputed civil rights, so it is not considered as extortion <sup>[6]</sup>.

In addition, the quoted viewpoint comes from the Commentary on Practical Criminal Law. The author of the book, Dr. Yu Haisong, serves as the Deputy Director of the Research Office of the Supreme People's Court of the People's Republic of China, and his views in the book usually represent the theoretical perspectives of the Supreme People's Court.

### **3.2 Blatantly destroying another person's character or reputation**

This behaviour may be suspected of insult and defamation. According to Article 246 of the Criminal Law, this crime refers to the serious act of publicly insulting others or fabricating facts to defame others by violence or other means.

In the era of the Internet and self-media, professional anti-counterfeiters often use media exposure to force illegal operators to fulfil their compensation obligations. This involves citizens' rights to press freedom, freedom of speech, information security, reputation, privacy, etc. Anti-counterfeiting activities can easily exceed the boundaries of rights, and can infringe upon the personal rights and reputation of others. The law does not grant ordinary citizens the 'exposure right'. According to The Beijing Chaoyang District People's Court Case People v. Qin Chaohui 2013 Chao Xing Chu No.2584, Dr. Yu commented that If they expose the facial images of operators and market managers without authorization, or 'human flesh search' other people's information, it may constitute the crime of insult or defamation <sup>[6]</sup>.

### **3.3 Seeking own interests by causing social disturbance**

This kind of behaviour may be suspected of picking quarrels and provoking trouble. This crime has become a 'pocket crime', and professional anti-counterfeiting activities can be put into this 'pocket'. According to Article 293 of the Criminal Law, this crime refers to acts of creating trouble out of nothing, inciting disturbances, beating and injuring innocent people, acting tyrannically, and disrupting public order in public places. On the

subjective side, the perpetrator has a mentality of seeking anti-social morality and psychological stimulation, such as seeking dominance and existence; on the objective side, the perpetrator has committed one of the following behaviours prohibited by criminal law provisions: 1) Beating others at will, with serious circumstances; 2) Chasing, intercepting, insulting, and intimidating others, with serious circumstances; 3) Forcibly taking or arbitrarily damaging or occupying public or private property, with serious circumstances; 4) Provoking disturbances in public places, causing serious disorder. In reality, professional anti-counterfeiters generally do not commit the first two acts. On the contrary, unscrupulous operators become angry and beat, chase, intercept, insult, and intimidate anti-counterfeiters at will. This is especially true for markets and companies with poor management and evil forces. Regarding the third act, attention should be paid to distinguishing between self-help behaviour and provocation behaviour. Competing with the business operator for physical evidence in order to handle it to the police, or reporting to the police or filing a complaint to a relative authority in a timely manner are actions of self-help, rather than provoking disturbance. If the fourth act is directed at a specific natural person, it should not be considered the crime of causing social disturbance<sup>[6]</sup>.

### **3.4 Purchasing goods into and out of the country border**

Purchasing on behalf of others is when people who are on business trips or traveling abroad are entrusted by their relatives or friends to buy some cheap and good quality goods on their behalf. Customs usually takes a tolerant attitude towards citizens who purchase a small amount of special goods for themselves or on behalf of others. In reality, some people purchase goods of large quantities, or of huge cost on behalf of others. Usually, they only need to pay the taxes according to the law, but sometimes they are charged with smuggling crime. In some cases, due to the lack of Chinese labels or import approval documents (such as medicines), these purchasers are charged with

selling counterfeit drugs, or counterfeit goods, or illegal business operations. Objectively, such purchasers may fail to truthfully declare the items they carry, or intentionally circumvent customs checkpoints. However, subjectively, they have no intention of profit-making and do not constitute a smuggling crime; Regarding the purchase involving drugs, since the ‘Drug Administration Law of the People’s Republic of China’ revised in 2019 has deleted the provision that the sale of drugs without import approval will be treated as counterfeit drugs, it is not appropriate to arbitrarily treat such purchasing activities as the crime of selling counterfeit drugs, the crime of selling counterfeit goods, and the crime of illegal business operations, but the Supreme Court should be consulted<sup>[6]</sup>. Some people have taken the advantage of purchasing on behalf of others in order to make money, for example, by smuggling under the guise of purchasing on behalf of others. Their so-called ‘purchasing on behalf of others’ is actually an ‘ant moving’ style of smuggling, which is significantly different from real purchasing on behalf of others. The act of smuggling imported drugs may constitute the crime of obstructing drug management, but it is not appropriate to impose punishment for multiple crimes at the same time.

### **Reference**

- [1] Sohu.com., 2018, May 4. Three ‘professional anti - counterfeiters’ were arrested! The Supreme Court: No longer supports professional anti - counterfeiting!. Retrieved from [https://www.sohu.com/a/271349248\\_771937](https://www.sohu.com/a/271349248_771937).
- [2] Sun Yinshan v. Nanjing Oushang Supermarket Co., Ltd. (sales contract dispute)., 2014. Retrieved from <http://gongbao.court.gov.cn/Details/eda7ec2c3f19beba74278e4e331eb4.html>.
- [3] Meng, Q., 2020. Interpretation of Tort Liability in the Civil Code. China Legal Publishing House.
- [4] Supreme People’s Court of the People’s Republic of China., 2021. Civil Ruling (2021) No. 5274 of the Supreme People’s Court Civil Appeal. Chen Hongdong V Wuqiong Food Co., Ltd. and other two subjects. Retrieved from <https://www.>

---

pkulaw.com/gac/f4b18d978bc0d1c77e3bac62de532029b824  
9f5b5a74688fbdfb.html?way=listView.

- [5] Supreme People's Court & Supreme People's Procuratorate.,  
2013. Interpretation of the Supreme People's Court and  
the Supreme People's Procuratorate on Several Issues  
Concerning the Application of Law in Handling Criminal

Cases of Defamation and Other Crimes Committed  
via Information Networks. [https://www.spp.gov.cn/  
zdgz/201309/t20130910\\_62417.shtml](https://www.spp.gov.cn/zdgz/201309/t20130910_62417.shtml)

- [6] Yu, H., 2022. Commentary on Practical Criminal Law.  
Peking University Press.