

Research on the Rules of Professional Anti-Counterfeiting Behavior in the Field of Consumption

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Abstract: Focused on the legal status of professional anti-counterfeiters in the field of consumption and the application of punitive damages system, the problems and disputes about professional anti-counterfeiters' behavior in theory and practice at present are systematically summarized and analyzed, the characteristics of professional anti-counterfeiting behavior are deeply analyzed from the legal basis, amount and means of claim, and effective guidance and regulation strategies for professional anti-counterfeiters' behavior in the field of consumption are tried to be put forward from three dimensions: civil disputes, administrative violations and criminal offences in this paper.

Keywords: Professional Anti-counterfeiters; Legal Regulation; Punitive Damages.

1. Introduction

Law of the People's Republic of China on the Protection of Consumer Rights and Interests was reviewed and passed at the Fourth Meeting of the Standing Committee of the Eighth National People's Congress on October 31 of 1993. Article 49 of this law established a punitive damages system for business operators who engaged in fraudulent activities, clearly stipulating that consumers have the right to demand operators to provide *return one for one* based on the costs that the consumers paid for the commodities purchased or services received when they suffer fraud. Based on the economic incentives brought by this system, the group of professional anti-counterfeiters emerged and gradually entered the public eye. Subsequently, Food Safety Law of the People's Republic of China and Advertising Law of the People's Republic of China as well as other laws and regulations were successively revised and promulgated, further expanding the scale and social influence of professional anti-counterfeiters. However, while professional anti-counterfeiters purified the market environment, they also caused a series of problems, such as repeated reporting, waste of administrative and judicial resources caused by split litigation, and damage to the business environment caused by malicious complaints and reports. The boundary of professional anti-counterfeiting behavior and its role have increasingly become the focus of controversy among all parties in society.

2. Organization of the Text

2.1. Legal Background and Historical Evolution of Professional Anti-Counterfeiters

2.1.1. The Concept of Professional Anti-Counterfeiters

Strictly speaking, professional anti-counterfeiting is not a legal concept, and it has not been clearly defined in China's current laws and regulations. Even if it is occasionally mentioned in official government documents or news reports, its connotation and extension are not clearly expounded. In Law of People's Republic of China on the Protection of Consumer Rights and Interests and other laws and regulations,

the entities entitled to these rights are explicitly defined as *consumers*. Therefore, when discussing the concept of professional anti-counterfeiters in academic circles and judicial practice, it is often distinguished from the concept of consumers. At present, the regulation of the behavior of professional anti-counterfeiters is still sketchy, and the legal provisions are not easy to operate. In particular, the term *professional anti-counterfeiting* has not been confirmed at the legislative level, and it is more common in media propaganda. However, it is undeniable that professional anti-counterfeiters have obvious characteristics of using legal rules to seek economic benefits, which makes them essentially different from ordinary consumers.

With the rapid development of information technology and social economy, the field and scope of professional anti-counterfeiting have been expanding, and its social effects have become increasingly prominent. Laws and regulations such as Food Safety Law of People's Republic of China and General Rules for Labeling in Prepackaged Foods (GB7718—2011) have brought policy support to professional anti-counterfeiters to a certain extent, which further expanded the field of professional anti-counterfeiting to the food field and created an opportunity for the proliferation of professional anti-counterfeiting. For example, General Rules for Labeling in Prepackaged Foods clearly stipulates the contents that should be marked in food pre-packaging. However, in recent years, there are still some defects in the implementation of the General Rules. Some commodity packages violate the provisions of the fourth paragraph of Article 3 of the General Rules, and the products are publicized by exaggerating or even misleading consumers. The contents of the ingredients list are not in conformity with the provisions of Article 4. With the diversification of food sales methods and the gradual development of family workshops in production and processing, the problem of inadequate implementation of food pre-packaging norms has become increasingly prominent and has become the focus of professional anti-counterfeiters. [1]

2.1.2. Development Course of Professional Anti-Counterfeiters

The legal and institutional basis of professional anti-counterfeiting or professional anti-counterfeiters can be

traced back to the punitive damages system stipulated in Article 49 of Law of People's Republic of China on the Protection of Consumer Rights and Interests. Judging from the effect of law enforcement, legislators did not foresee a large number of cases of *buying fake claims* for profit when formulating the system. However, professional anti-counterfeiting has played a positive role in cracking down on counterfeit goods and purifying the market environment, so the policy generally holds a positive attitude towards it. Through the publicity of media, consumer associations, courts and other departments, the relevant cases of professional anti-counterfeiting have effectively improved consumers' ability to distinguish fakes and awareness of rights protection. In 1995, Wang Hai, the representative of the first batch of professional anti-counterfeiters, won the honor of *Consumer Anti-Counterfeiting Award* issued by China Consumer Protection Foundation for his successful anti-counterfeiting in major shopping malls in Beijing.

However, with the increasing activity of professional anti-counterfeiters, extensive doubts have also been triggered by their subjective profit-seeking. Since then, an unfavorable attitude towards professional anti-counterfeiters has been

held by some courts in their judgments. These courts believe that they buy goods with knowledge of fakes and for the purpose of making profits rather than meeting the needs of daily consumption, so they do not belong to consumers. Although professional anti-counterfeiters have caused social disputes, their positive role in maintaining market order cannot be ignored. To this end, the government has increased its support for punitive damages and made it clear through laws, regulations and judicial interpretations. For example, Food Safety Law of People's Republic of China, which was implemented in 2009, put forward the punitive damages of *return one for ten*; In 2013, Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Food and Drug Disputes made it clear for the first time that punitive damages should be applied to *knowing and buying fakes* in the food and drug field; Law of People's Republic of China on Protection of Consumer Rights and Interests, which was revised in 2014, has raised the amount of punitive damages from *return one for one* to *return one for three*, with the minimum amount of compensation being 500 yuan.

Table 1. Important Events in the Development of Professional Anti-Counterfeiting

Numbler	Time	Important Events
1	January 1, 1994	Law of the People's Republic of China on the Protection of Consumer Rights and Interests has officially come into effect, for the first time proposing the punitive damages provision of <i>return one for one</i> .
2	1995	Wang Hai bought counterfeit Sony headphones at Longfu Building in Beijing and successfully received compensation, sparking a trend of professional anti-counterfeiting, and was awarded the <i>Consumer Anti-Counterfeiting Award</i> .
3	January 7, 1998	The Intermediate People's Court of Tianjin Municipality ruled on the sales dispute case between Wang Hai and Tianjin Longmen Building Yong'an Company, rejecting Wang Hai's claim for double compensation for the first time on the grounds that it was not for personal consumption purposes.
4	December 2003	The First Intermediate People's Court of Beijing Municipality has finally sentenced Zang Jiaping to three years in prison for extortion during the process of fighting counterfeit goods, making him the first professional anti-counterfeiter in the country to be criminally convicted.
5	June 1, 2009	The implementation of Food Safety Law of the People's Republic of China introduces, for the first time in the food sector, provisions for tenfold punitive damages.
6	December 9, 2013	Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Food and Drug Dispute Cases have been released, marking the first judicial clarification on the application of punitive damages in the food and drug sector for <i>knowing and buying fakes</i> .
7	March 15, 2014	The revised Law of the People's Republic of China on the Protection of Consumer Rights and Interests has officially come into effect. The new law raises the amount of punitive damages from <i>return one for one</i> to <i>return one for three</i> , with the minimum amount of compensation being 500 yuan.
8	September 1, 2015	The revised Advertising Law of the People's Republic of China has come into effect, imposing severe penalties for illegal advertising activities, with a minimum fine of 200,000 yuan. The advertising sector has become a key focus for professional anti-counterfeiting efforts.
9	October 1, 2015	The revised Food Safety Law of the People's Republic of China has come into effect, increasing the severity of punitive damages, adding a provision for a minimum compensation amount of 1,000 yuan, and excluding situations such as labeling defects that do not affect food safety.
9	October 1, 2015	The revised Food Safety Law of the People's Republic of China has come into effect, increasing the severity of punitive damages, adding a provision for a minimum compensation amount of 1,000 yuan, and excluding situations such as labeling defects that do not affect food safety.
10	December 2016	Regulations on the Implementation of Law of the People's Republic of China on the Protection of Consumer Rights and Interests (Draft for Submission) stipulate that profit-driven purchases are not protected by the law, but it has not been implemented.
11	May 19, 2017	The Supreme People's Court of the People's Republic of China responded to Proposal No. 5990 submitted at the Fifth Session of the 12th National People's Congress, they are considering gradually curbing profit-driven counterfeit-fighting activities in areas other than food and drugs.
12	May 1, 2018	Food Safety Supervision Regulations of Shenzhen Special Economic Zone have come into effect, stipulating that investigations into food safety complaints can be terminated if they exceed reasonable consumption or if obtaining compensation is the main source of income.
13	2019	Documents such as Guiding Opinions of the General Office of the State Council on Promoting the Standardized and Healthy Development of the Platform Economy all point out the need to crack down on online fraud and extortion under the guise of anti-counterfeiting in accordance with the law.
14	January 1, 2020	The Interim Measures for the Handling of Complaints and Reports under Market Supervision and Administration have come into effect, stipulating that complaints not related to non-essential consumer needs will not be accepted.

It is precisely because of the supportive attitude of the policy from 2009 to 2015 that the number of professional anti-counterfeiters surged and gradually turned to the team combat mode. In view of the long period and high cost of product quality inspection, and the problems such as label defects and illegal advertisements are easy to identify, the focus of professional anti-counterfeiters has also shifted from product quality to label defects and illegal advertisements. Some professional anti-counterfeiters even use illegal means such as *switching packages, entrainment and counterfeiting* to make claims. In this context, professional anti-counterfeiters deviate from the original intention of anti-counterfeiting. The surge in complaints and reports every year greatly occupies administrative and judicial resources, which makes grassroots supervisors overwhelmed. At the same time, many businesses are also deeply disturbed. Professional anti-counterfeiting has affected the business environment to some extent. The large amount of compensation easily obtained through anti-counterfeiting makes the anti-counterfeiting behavior gradually professional. Especially in the food industry, the producers of small workshop production mode have become the key *targets* of professional anti-counterfeiters because of imperfect packaging and sales procedures as well as weak legal awareness. [2] For this part of anti-counterfeiters, it is often easy to get compensation by cracking down on these businesses, so as to achieve the purpose of profit, and then make the anti-counterfeiting behavior professional. Therefore, no matter at the central or local level, the attitude towards professional anti-counterfeiting has changed, from previous support to restraint. For example, The Supreme People's Court of the People's Republic of China responded to Proposal No. 5990 submitted at the Fifth Session of the 12th National People's Congress, stating that the current professional anti-counterfeiting activities show a trend of commercialization, which violates the principle of good faith and wastes judicial resources. Based on this, they are considering gradually restricting anti-counterfeiting activities for profit purposes except for food and medicine. Shenzhen has even directly restricted professional anti-counterfeiting through local legislation, stipulating that when relevant departments accept complaints and reports on food safety issues, if it is found that the complainant exceeds reasonable consumption or relies mainly on seeking compensation or rewards for income, the investigation may be terminated. This change in attitude also reflects the evolution of professional anti-counterfeiting. (As shown in Table 1).

2.2. Legal Status and Nature of Actions of Professional Anti-Counterfeiters

Professional counterfeit claimants often use various means to seek compensation. When consumer disputes occur in transactions between consumers and producers or operators, consumers should be allowed to use all legal means to protect their own rights and interests. [3] Under the behavior logic of *anything not prohibited by law is permissible*, professional anti-counterfeiters, when private negotiations with operators fail, will choose to file a lawsuit or simultaneously report complaints and sue, in order to pressure operators into providing compensation. However, some professional anti-counterfeiters, due to limitations in their understanding of the legality of operators, believe that they are strictly cracking down on counterfeit and inferior products, when in fact the matters they report or complain about do not constitute

violations or are minor in nature and can legally be exempt from punishment or only receive lighter penalties. Even so, administrative authorities still need to handle them in accordance with the procedures for complaints and reports. If professional anti-counterfeiters are dissatisfied with the handling results and continue to petition or request a review, administrative agencies, being constrained by administrative procedural norms, must prepare relevant materials to respond and cannot ignore them. This may lead administrative agencies into the dilemma of procedural deadlock.

Administrative agencies face limitations in resources, and if the number of cases continues to rise, backlogs may occur even if processing efficiency is improved. Complaints and reports that abuse rights will occupy limited administrative resources, causing consumer demands that need urgent resolution to be unable to be handled in a timely manner. The determination of illegal acts and the discretion for penalties should be the responsibility of specialized administrative agencies and judicial adjudication bodies. However, professional anti-counterfeiters, driven by profit motives, often have a *generalized* understanding of illegal acts, treating many actions that are not illegal or not seriously illegal (such as label defects) as illegal and filing lawsuits, demanding punitive damages. When administrative agencies confirm that no illegal acts have occurred and make a decision not to impose penalties, it will result in professional anti-counterfeiters being unable to achieve their compensation objectives.

Under the weighing of interests, professional anti-counterfeiters usually choose to attempt rights remedies again, pressuring operators for compensation through petitions, reconsiderations, or litigation, thereby occupying a large amount of judicial resources and causing more waste of public resources. [4] Currently, there's a lack of a reasonable balance in regulating the behavior of professional anti-counterfeiters in Chinese law, that is mainly manifested as a campaign-style law enforcement approach and lacking top-level design, which puts professional anti-counterfeiters in a dilemma of being unable to advance or retreat. When encouraging laws are introduced, they grow uncontrollably, while when restrictive measures appear, they immediately halt, unable to exert positive social effects or reduce negative impacts, resulting in repeated disorder within the entire group.

Based on the behaviors and effects observed in the development of professional anti-counterfeiters groups, professional anti-counterfeiting can be defined as: actions aimed at obtaining profits by knowing and buying counterfeit goods, placing counterfeit goods on the shelves, or other abnormal consumption methods, or by knowingly engaging in slightly illegal business activities and reporting them to market regulatory authorities, and abusing the rights of reporting, complaining, or even litigation to coerce or indirectly coerce producers and operators into concessions in order to obtain high improper benefits.

2.2.1. The Consumer Characteristics of Professional Anti-Counterfeiters

There has been considerable controversy in both academia and practice regarding whether professional counterfeit claimants possess consumer attributes and, consequently, whether the punitive damages system can be applied to them. Some scholars believe that professional counterfeit claimants have consumer attributes, and it is not necessary to consider the purpose of their purchase. As long as the goods they

purchase are not intended for resale, they should be recognized as consumers. [5] Regarding the aforementioned view, the Primary People's Court of Shijingshan District of Beijing Municipality held a similar position in its 2009 publication *Difficulties and Solutions in Consumer Litigation Disputes*. However, some scholars have clearly pointed out that professional anti-counterfeiters are not consumers and cannot apply the punitive damages system, because the premise for applying this system is that the operator engages in fraudulent behavior, whereas professional anti-counterfeiters *know and buy fakes*, in other words, they are not subject to fraud. [6] Shanghai, Zhejiang, and other places have also issued guidelines on handling complaints and reports from professional anti-counterfeiters, sharing the same view mentioned earlier. They believe that the determination of *fraud* should be based on the *Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of Civil Law of the People's Republic of China (Trial Implementation)*, which means that not only the business must have the intention to commit fraud, but the consumer must have made a wrong declaration based on the business's fraud. According to these opinions, it's obvious that the actions of professional anti-counterfeiters who knowingly buy fake goods can't be subject to punitive damages. Some scholars also suggest that professional anti-counterfeiting should be discussed separately depending on the field involved; for example, they recommend a positive stance toward professional anti-counterfeiting in the food sector, since food concerns life safety. [7]

The viewpoint held in this article is that the consumer status of professional anti-counterfeiters cannot be completely denied merely because their motives and behaviors differ from those of ordinary consumers. In the modern market economy, the concept of consumers should have a certain degree of inclusiveness and extensibility. With the diversification of consumption forms and the complexity of the market, the role of consumers is also constantly evolving. Professional anti-counterfeiters purchase goods or services through normal market transaction channels and pay the corresponding price, thereby acquiring the status of market participants as consumers. Whether their purchasing behavior is based on genuine consumption needs or purely for economic profits, their qualification as participants in the civil economic field should not be affected.

2.2.2. The Distinction of Professional Anti-Counterfeiters' Behavior

Legal enforcement can be divided into public enforcement and private enforcement. [8] Polinsky believes that the effects of having the law enforced by either public authorities or private entities present a picture of strengths and weaknesses on both sides, and a distinction only needs to be made regarding the scope of application. When the benefits of enforcement exceed the costs (despite the drawbacks of excessive private enforcement), the value of private enforcement becomes apparent; when the benefits of enforcement are less than the costs (for example, if private enforcement is ineffective or neglected), public authority enforcement is more deterrent. [9] As mentioned earlier, the emergence of professional anti-counterfeiters has a positive role in regulating the business practices of producers and sellers, while irregular anti-counterfeiting behavior, or even malicious anti-counterfeiting behavior, can be guided, restricted, and punished through the law. Therefore, it is

necessary to analyze the behavior of professional anti-counterfeiters from three aspects: basis for claims, amount of claims, and means of claims. From the three dimensions of civil dispute behavior, illegal behavior, and criminal behavior, reasonable boundaries for professional anti-counterfeiting should be delineated. For behaviors that cross these boundaries, progressive legal provisions should be applied to make adjustments, up to applying the criminal law to combat criminal acts committed by professional anti-counterfeiters.

1. Whether the basis for the claim is genuine

In complaints, reports, and litigation cases involving professional anti-counterfeiters, the complainant must submit preliminary evidence demonstrating that the operator has committed illegal acts such as fraud or false advertising. If the goods or services are flawless, and the issues proven by the evidence are deliberately fabricated or falsified by the professional anti-counterfeiters, then their actions do not guide market operators to comply with regulations but instead have a harmful effect on the normal economic order of the market. Therefore, such behavior goes beyond the scope of civil legal acts and must be regulated by administrative law or even criminal law. In practice, there are professional anti-counterfeiters who falsify shopping receipts using image processing software to claim that products are expired, or who deliberately create the appearance of rights being infringed through swapping, smuggling, or mixing products. In such cases, the rights claimed by these professional anti-counterfeiters are actually fabricated, and there are no real legal rights that need to be protected. Their subjective intention has shifted from simply seeking profit to the illegal purpose of unlawfully taking others' property. On the contrary, if the goods or services of a producer or operator indeed have defects or significant problems, and the evidence submitted by professional anti-counterfeiters is not intentionally fabricated, then the basis for their claim truly exists and is legitimate, and it should not be considered that they have the purpose of illegally possessing others' property. Such situations, where there is a genuine basis for a claim, should naturally be included in the adjustment of civil legal relations.

2. Whether the requested amount is reasonable

Whether the amount of the claim is reasonable, or more precisely, whether the amount of the claim is within the limits allowed by law, is an important criterion for determining whether the actions of professional anti-counterfeiters are illegal or even criminal. If the claim amount of a professional anti-counterfeiter is calculated based on explicit legal provisions and is within the maximum limit allowed by law, then their claim should be regarded as a lawful civil legal act. If their claim amount exceeds the maximum allowed by law, in other words, if their claim has no legal support, insisting on a claim amount that is too high at this point means that they have the intent to illegally possess the property of others. In that case, their behavior is no longer regulated by civil law norms, but needs to be elevated to the application of administrative law norms or criminal law norms to regulate their illegal or criminal actions.

3. Whether the means of claiming compensation are proper

Whether the means of claiming compensation are legitimate is an important boundary to distinguish whether the actions of professional anti-counterfeiters are legal. Professional anti-counterfeiters, after acquiring products with quality issues or false advertising through normal purchasing behavior, negotiate with merchants or resolve disputes through legal channels in accordance with legally stipulated

procedures and methods. Such compensation claims using legal means help to prompt merchants to pay attention to product quality and promote more standardized market operations. Therefore, this kind of compensation claim should be included in the adjustment of civil legal relations. However, if professional anti-counterfeiters maliciously provoke, deliberately create problems to threaten and extort businesses for compensation, then their claims go beyond the scope of civil legal relations and need to be regulated under criminal law, being governed as the crimes of extortion or fraud. However, it should be noted that if professional anti-counterfeiters engage in activities such as media exposure, complaints, and reports, and the factual basis for their claims for compensation indeed exists—that is, if the producers and operators have indeed engaged in illegal activities—then the compensation actions, whether they occur before or after the media exposure, complaints, or reports, should not be considered illegal. Because the producer or operator indeed has faults, the actions of professional anti-counterfeiters are based on the illegal actions of the producers or operators. In other words, the risk that producers or operators have to bear for their own illegal behavior is clearly known; they are inherently supposed to bear legal responsibility, and claiming compensation does not make them suffer adverse consequences without a legal basis.

2.3. Categorized Regulation and Guidance of Professional Anti-Counterfeiting Activities

The actions of professional anti-counterfeiters have a dual effect in the market: on one hand, they can effectively crack down on illegal producers and operators, thereby purifying the market environment; on the other hand, there is also a risk of abuse of rights, which may disrupt market order. According to laws and regulations related to the protection of consumer rights, the private implementation of a legal punitive damages system aims to punish illegal producers and operators and maintain a sound market order. However, if professional anti-counterfeiters abuse their rights during the implementation of relevant laws to infringe upon the legitimate rights and interests of producers and operators, thereby disrupting market order, they should bear responsibility according to the law. In view of the chaos caused by the current behavior of professional anti-counterfeiters and the potential legal issues arising from rights abuse, it is necessary for them to be regulated by law. Based on the behavior and characteristics of professional anti-counterfeiters in legal practice, the behaviors of them that need to be regulated can be further divided into three types: civil actions, administrative violations, and criminal acts, with different types being regulated under different legal relationships.

2.3.1. Legitimate Civil Acts Should Be Incorporated into the Adjustment of Civil Legal Relations

For professional anti-counterfeiters who purchase products or services with quality defects or false advertising through legal channels, and then, within the maximum compensation limit provided by law, seek compensation from merchants through negotiation, complaints, lawsuits, or other legitimate means, even if they knowingly buy defective products, as long as the claims are based on truthful grounds, the compensation amount is reasonable, and the means of claiming are legitimate, such actions should be regarded as civil acts, included within the adjustment of civil legal relations, and be subject to the relevant provisions of the Law of the People's Republic of China on the Protection of

Consumer Rights and Interests and the Food Safety Law of the People's Republic of China. In this way, a grassroots supervisory force ensuring the honest operation of producers and sellers can be gathered, the tendency to be treated with others' rational indifference when an individual consumer defends their rights can be avoided, and the power of rights protection can be strengthened.

2.3.2. Illegal Acts Should Be Punished by Administrative Legal Relations.

When professional anti-counterfeiters deliberately fabricate or falsify the fraudulent actions of producers and operators, and widely disseminate false information through media exposure during the negotiation process for compensation with producers and operators, if the information is verified by the food safety supervision and management authorities and confirmed to be false, such behavior may violate the provision in Article 25, Paragraph 1 of Law of the People's Republic of China on Penalties for Administration of Public Security, which prohibits fabricating and spreading rumors. Professional anti-counterfeiters subjectively have the intent to fabricate false information, and objectively, they carry out the act of creating false information and spreading it widely. This behavior carries the risk of causing heightened public panic and disrupting public administrative order, which has already exceeded the scope of civil legal relations, constitutes a suspected violation of the law, and requires administrative penalties.

2.3.3. Criminal Acts Should Be Punished by Criminal Legal Relations.

When professional anti-counterfeiters deliberately fabricate facts and use methods such as threats, coercion, or deception to demand money from market operators exceeding the legal limit, in such cases, the basis, amount, and methods of the claims of professional anti-counterfeiters lack legitimacy. Such claims severely infringe on the property rights of market operators and disrupt the market economic order, and thus need to be punished by criminal means to purify the market economic order.

1. Extortion

In certain situations, professional anti-counterfeiters often strive to obtain the maximum amount of compensation based on cost-benefit considerations. Although the behavior of individuals pursuing maximum personal gain can be understood to some extent, if an individual, in the absence of actual harm to their rights, deliberately fabricates or falsifies facts through methods such as substitution or smuggling, and uses this as a basis to negotiate compensation with producers or operators, and if negotiations fail, further threatens or coerces producers or operators through media exposure, complaints, or reports, and even uses violence or intimidation to scare producers or operators, causing them to feel fear and demanding compensation clearly beyond a reasonable scope or in an enormous amount, and ultimately successfully obtains compensation, such behavior meets the constitutive elements of the crime of extortion. If a professional anti-counterfeiter lacks factual grounds for a claim, but the methods used are intimidating in nature, causing producers and operators to fall into a state of fear, and the amount demanded reaches the standard for criminal liability, or even if there are no factual grounds for the claim, but multiple times the appearance of rights being infringed is fabricated, intimidating behavior is carried out, and compensation is demanded, this also meets the conditions for the crime of extortion.

2. Fraudulent behavior

When professional anti-counterfeiters forge or fabricate appearances of rights violations, they do not have a legitimate basis for claims. At this point, the profit-seeking motive of the professional anti-counterfeiters transforms into the purpose of illegally obtaining the property of producers or operators. If a professional anti-counterfeiter acts with this purpose, successfully deceives legitimate producers or operators into consciously disposing of their property, and the property obtained by the professional anti-counterfeiter reaches the legally stipulated threshold for a significant amount, it can be determined that the actions of the professional anti-counterfeiter constitute the crime of fraud.

3. Criminal gang-related activities

In legal practice, the actions of professional counterfeiters may not only constitute the crimes of extortion and fraud, but may also involve organizing or participating in criminal organizations of a mafia nature. In the early development stage of the professional anti-counterfeiter community, their activity patterns were mostly individualized anti-counterfeiting actions. However, as the scope of anti-counterfeiting activities continued to expand, professional anti-counterfeiting companies began to emerge, forming a team-based and professionalized model of rights protection. These anti-counterfeiting groups or companies are mostly composed of specific groups of people such as family members or people from the same hometown. Some professional anti-counterfeiting organizations have developed into team-based or corporate forms, and in the absence of factual basis for claims, they arbitrarily fabricate or invent illegal acts by operators and use coercive methods to demand punitive compensation. Such behavior seriously infringes on the legal interests protected by criminal law and organizedly disrupts the order of economic and social life; therefore, such organized gang crimes must be severely punished by criminal means.

3. Literature References

This article is written based on a systematic review of existing legislation, judicial cases, and academic research results. At the legislative level, starting from the punitive damages system established by Article 49 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests promulgated and implemented in 1993, the revision trajectory of laws and regulations such as Food Safety Law of the People's Republic of China and Advertising Law of the People's Republic of China, as well as the introduction of relevant judicial interpretations, was reviewed, clarifying the institutional background that led to the emergence and expansion of professional anti-counterfeiters. At the theoretical level, scholars such as H.Q. Yin and P. Wu conducted empirical analyses on the specific manifestations and regulatory paths of professional anti-counterfeiting behavior in fields like food; J. Zhou proposed substantive judgment standards for the legitimacy of consumer rights protection behaviors from a criminal law perspective; X. Xu's theory on private enforcement of law provides an analytical framework for understanding the social function of professional anti-counterfeiters; regarding the consumer identity recognition of those who *know and buy fakes* and the applicable conditions for punitive damages, scholars such as H.Y. Tang, M.H. Su, and Y.J. Wang hold different positions, reflecting the divergence within the academic community. In terms of case studies, by selecting a series of landmark

judgments such as Wang Hai's anti-counterfeiting case and Zang Jiaping's extortion case, the evolution of the judiciary's stance on the identification of professional anti-counterfeiters and the characterization of their actions is revealed. The aforementioned literature and cases together form the foundation of the problem awareness and argumentation logic of this article and also provide theoretical support and empirical reference for constructing a stratified regulatory system for professional anti-counterfeiting behavior.

4. Conclusion

The actual deviation from lawful acts is crime or illegality. The disorder in professional anti-counterfeiting actions has triggered various chaos in legal practice, which cannot be tolerated by public opinion, administrative law enforcement agencies, and judicial organs, but the positive effects of such actions also need to be correctly recognized. The argument regarding the public welfare of the group of professional anti-counterfeiters and private education follows a similar logic. The existence and development of the group of professional anti-counterfeiters are premised on institutional incentives and the illegal actions of operators, and it is of significant importance in promoting the implementation of consumer rights protection laws. The positive development of professional anti-counterfeiting can deter potential illegal producers and operators, make up for the shortcomings of public law enforcement, and protect the legitimate rights and interests of the vast number of consumers. Therefore, when legally regulating professional anti-counterfeiting activities, a clear distinction should be made: anti-counterfeiting actions based on genuine claims, reasonable compensation amounts, and legitimate means should be incorporated into civil legal relations for regulation and guidance; whereas actions under the guise of anti-counterfeiting that actually disrupt the market economy or infringe upon others' property rights should be strictly punished as illegal or criminal acts.

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