

Research on the Legitimacy Boundary of Buying False Products on Purpose

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Abstract—The promulgation of the Supreme People's Court's Provisions on Several Questions Concerning the Application of Law in Trial of Food and Drug Disputes clearly affirms the right of those who buy false products on purpose to claim damages, which provides a certain legal basis for the behavior of buying false products on purpose at the level of legal norms. In the context of the current law and under the mode of shared economy, this paper presumes that those who buy false products on purpose still have the legitimacy of advocating punitive damages right under the knowledge circumstances through expanding its concept through the negative interpretation of the definition of consumers, so as to seek the legitimacy boundary of the behavior of buying false products on purpose that is in line with the tilt philosophy of consumer rights in the system design of the Law on Protection of the Rights and Interests of Consumer, which makes consumers' legitimate rights and interests be protected to the greatest extent.

Keywords—buying false products on purpose; consumers; social welfare; legitimacy boundary

I. INTRODUCTION

From the "Wang Hai phenomenon" in the 1990s to the current phenomenon of buying false products on purpose and professional counterfeiters, which has been widely concerned by the legal profession and people from all walks of life. However, there is no clear conclusion whether there is a basis for the right to claim punitive damages of the problem of buying false products on purpose and whether it has legal legitimacy. In the theoretical and practical circles, there are different opinions and practices for the pros and cons.

In recent years, the illegal activities of manufacturing and selling counterfeit and shoddy food and medicines are endlessly emerged in Chinese enterprises, such as "substandard milk powder", "toxic capsules", "lean meat powder", "and other food and drug safety incidents related to the national economy and people's livelihood, not to mention those phenomena of "selling seconds at the best quality prices", "mixing the false with the genuine" and "giving less than the proper weight". In 2014, the Supreme People's Court promulgated the "Provisions on Several Issues Concerning the Application of Law in Trial of Food and Drug Disputes". Such Provisions enables those who buy

false products on purpose who claim the right to compensation for damages to obtain rights in the field of food and drug, and makes them get corresponding legitimacy in the legal level. Following the Provisions, the Supreme People's Court's No. 23 of guidance case also give the firm attitude to the right of those who buy false products on purpose to claim damages and ten times punitive damages. In the past, most people in the practice circle hold a negative attitude toward this issue, and the Provisions issued by Supreme People's Court give a positive attitude to the issue of buying false products on purpose, which attracts new attention from all walks of life.

As for the discussion of the problem of buying fake products on purpose, the author thinks that we should not simply look at the problem superficially, adopt the general one-size-fits-all for evaluation or determine the nature mechanically. Instead, we should treat it comprehensively according to different situations and proceed from the causes of the phenomenon of buying fake products on purpose. Meanwhile, we should analyze its objective reality, explore its realistic possibility of development, and then seek for its legal boundary at the legal level, so as to realize the connection with the legislative original intention and purpose of the Law on Protection of the Rights and Interests of Consumer.

II. THE SOCIAL SIGNIFICANCE OF BUYING FALSE PRODUCTS ON PURPOSE

Why is it necessary to discuss the legitimacy of buying false products on purpose? At present, China's government has limited ability to crack down on counterfeit products, counterfeit and shoddy products are rampant in the market, the market operators are short of integrity, and consumers are repeatedly cheated. If the law can give the right to punitive damages to those who buy false products on purpose, it is very necessary to purify the market and crack down on the phenomenon of counterfeit and shoddy products. In the market economy conditions, gaining benefits and living materials must be made through city management and legal transactions. Obviously, gaining benefits through "buying false products on purpose" claims does not belong to gaining benefits through market exchange.¹Therefore, the definition

¹ Guo Mingrui: Is "Buying Fake Products on Purpose" Protected by Consumer Rights and Interests Protection Law? - Also on the

of those who buy false products on purpose as consumers is the theoretical basis to explore the behavior of buying false products on purpose and to demonstrate the legitimacy of this behavior.

The interests of those who buy false products on purpose should be protected by the Law on Protection of the Rights and Interests of Consumer, because it conforms to the legislative intention of the Law on Protection of the Rights and Interests of Consumer and the value concept of socialist fairness and justice. Counterfeit and shoddy products not only constitute a direct infringement on the property and health of consumers who buy products, but also bring serious infringement on the market of free trade because it will destroy the original fair, free, good and orderly competition in the consumer market, which causes more serious damage to the legitimate rights and interests of consumers. In the process of market transaction, both sides of the transaction are in equal position, with freedom of contract, honesty and credibility, fairness and justice. However, due to the existence of asymmetric information in the transaction process, transaction information cannot be fully accessed by consumers who are relatively in a passive position in the transaction. After the melamine poisoned milk powder incident, consumers generally have a sense of mistrust of domestic milk powder, which prefer to buy foreign milk powder at a high price in order to obtain quality assurance. This forced choice of consumers not only fails to best protect their own interests, but also makes the development of domestic dairy enterprises difficult at the same time and the market competition cannot get a benign development. In the long run, how to protect the legitimate rights and interests of consumers? This means that it is necessary to establish a new concept of fairness and justice to safeguard the legitimate interests of consumers and realize the value ideal of social justice in a substantive sense. Therefore, when we discuss the value concept of Law on Protection of the Rights and Interests of Consumer, we do not need to establish an absolute fairness and justice concept, but should create a relatively fair and just social legal environment through researching the value concept of Law on Protection of the Rights and Interests of Consumer. At the same time, we should bring it into the context of Law on Protection of the Rights and Interests of Consumer in order to spot a legitimate explanation for the phenomenon of buying false products on purpose.

III. LEGITIMATE JUDGMENT OF THE RIGHT TO BUY FALSE PRODUCTS ON PURPOSE

Does the phenomenon of buying false products on purpose have legal legitimacy? Do those who buy false products on purpose have a basis for the right to claim damages? The core of the problem lies in whether we can spot the legitimate foundation for the identity of those who buy false products on purpose from the legal principle. That is, whether they can be consumers in the sense of Law on Protection of the Rights and Interests of Consumer? The

positive view thinks that anyone who purchases commodities and receives services not for the ultimate purpose of profit can be identified as a consumer. That is to say, any individual who purchases commodities or receives services for purposes other than production purpose can be regarded as consumer behavior in the sense of Law on Protection of the Rights and Interests of Consumer. However, scholars who hold negative views think that those who buy false products on purpose make purchase behaviors for the purpose of obtaining punitive damages stipulated in the Law on Protection of the Rights and Interests of Consumer, and they are not for the purpose of living consumption but for the purpose of pursuing interests, as a result, they cannot be regarded as consumers in the Law on Protection of the Rights and Interests of Consumer. In other words, it becomes an obstacle to deny that whether they are a consumer identity or not because of their pursuit of interests. According to the definition of consumers in the Law on Protection of the Rights and Interests of Consumer, we can conclude that consumers who are identified as "for the demands of living consumption" belong to the scope of the adjustment of the Law on Protection of the Rights and Interests of Consumer. So, what is living consumption? With the continuous improvement of people's living standards, people's consumption patterns have undergone subversive changes in some areas of consumption. As a result, it is impersonal to distinguish consumers' identity only by whether they pursue interests. For example, in addition to the traditional comfortable housing needs, consumers now have a higher pursuit of supporting facilities, enjoyment of utility, property services, etc. when they purchase a house. More importantly, they pay much attention to the value-preservation and value-appreciation of housing in the future. Many people buy commercial housing may have a positive attitude to its future value-appreciation space for real estate investment, so when disputes arise between the purchaser and the seller, can the purchaser have the right to institute proceedings in the identity of consumer? The specific contents and pattern of manifestation of living consumption should also gradually show the trend of continuous opening up and dynamic development with the changes of the times.² Therefore, we cannot simply make a single definition of the specific connotation of living consumption.

The author believes that we should give the legitimacy of the right to claim compensation of those who buy false products on purpose starting from the legislative purposes and purposes of Law on Protection of the Rights and Interests of Consumer. In the market transaction, the unfair main body status will damage the interests of consumers, and it is often very difficult to get the corresponding compensation. In the systematic design, Law on Protection of the Rights and Interests of Consumer is deliberately inclined to favor consumers, so as to better safeguard consumers' legitimate rights and interests. Of course, these who buy false products on purpose are not for the purpose of using commodities to buy fake products, but often to seek

Application Scope of Consumer Rights and Interests Protection Law." *Contemporary Law*, No. 6, 2015, P. 72.

² Zheng Hongge, *Social Transition and Consumption Revolution: Changes in Urban Consumption Concepts in China*, Peking University Press, 2006, P. 8.

punitive damages, which becomes indeed a critical attack point for questioning those who buy false products on purpose. The reason for the skeptics is that the pursuit of economic interests is the real purpose of those who buy false products on purpose. The author believes that pursuing economic interests cannot become a distinguishing element of life consumption and production and operation. Because of the change of modern people's consumption concept, for example, many families are no longer just buying houses for the purpose of living, buying property for rent and obtaining high rent is also one of the purposes of real estate consumption. At the same time, more families will also consider the hedging value of property and even the possibility of future increment. Modern people's consumption of life is to seek high quality consumption while they want extra economic benefits. The shared economy pattern appeared in modern society obviously has two aspects of the consumption of life and the acquisition of economic interests, which is also a powerful proof that life consumption can also get economic benefits at the same time. At the same time, in the context of Law on Protection of the Rights and Interests of Consumer, consumers are entitled to the right to claim when their legitimate rights and interests are damaged, and the action of receiving benefits from legal rights should be justified in itself.

Affirming the consumer identity of those who buy fake products on purpose should be a prerequisite for the establishment of the legitimacy of the right to buy fake on purpose, and a comprehensive judgment should be made on the buyer's "knowledge" and its responsibilities. Does the buyer's "knowledge" and "purpose of claim" necessarily have a causal relationship? Whether the acquisition of benefits is the inevitable result of knowledge? The paragraph 1 of article 23 of Law on Protection of the Rights and Interests of Consumer stipulates the exception of liability for warranty of defects: "Operators shall guarantee the quality, performance, use and validity term of the commodities or services they provide in the normal use of the commodities or services they receive; however, except where consumers already know that there are defects before they purchase the commodities or accept the services, and there are such defects." However, except that the defect does not violate the compulsory provisions of the law." It can be seen from the article that "the buyer knows well" and "the defect does not violate the compulsory provisions of law." From this article, it can be seen that "buyer's knowledge" and "the existence of defect not violate the mandatory provisions" must coexist in order to make the act of buying fake products on purpose not be protected by law. Regulations affirm positively that "consumers' knowledge" is not an obstacle to the exercise of their claim rights in the field of food and drug consumption. Obviously, it is faithful to the original intent of the law, and we should affirm the right of those who buy fake products on purpose.

IV. CONCLUSION

The promulgation of the new consumer law, especially the release of Supreme People's Court's "Provisions on Several Issues Concerning the Application of Law in Trial of

Food and Drug Disputes", gives a positive signal to those who buy fake products on purpose. In fact, there are large number groups with social public welfare purpose in the groups who buy fake products on purpose. Their anti-counterfeiting behavior objectively cracks down on illegal acts that violate food and drug safety. The author thinks that, whether from the identity of those who buy fake products on purpose, or from whether knowledge and whether to obtain economic benefits, there is no space to support the legitimacy of the rights of those who buy fake products on purpose under the framework of the current law. When applying the law specifically, there is no need to blindly deny the legitimacy of buying fake products on purpose because there are professional counterfeiters who have no social public welfare purpose and just go after punitive damage. Based on the consideration of the purpose and purpose of legislation, we should let the act of buying fake products on purpose fall into the adjustment scope of legal regulation, so as to better stimulate consumers' awareness of protecting their rights, encourage consumers to fight against acts violating food and drug safety, crack down on counterfeit and shoddy products and purify the market competition environment. At the same time, consumers should supervise food and drug safety, and keep ringing the alarm bells for illegal operators, so as to better give full play the protective effect of Law on Protection of the Rights and Interests of Consumer to protects the legitimate rights and interests of consumers.

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