

The Dilemma of Achieving "Same Case, Same Sentence" in Cases of "Knowing and Buying Counterfeits" in the Field of Food and Drugs and Its Legal Progress

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Abstract. The frequent disparity in judicial rulings for identical cases of "Knowingly Purchasing Counterfeit Goods" within the food and drug sector has significantly undermined the authority of the law and compromised judicial fairness. An empirical study of 100 randomly selected judicial decisions from Shandong Province reveals that the current level of uniformity in judgments for equivalent cases is less than ideal. To delve deeper into the factors influencing these inconsistencies, this paper conducts an analysis of the suspicion of counterfeit awareness, the burden of proof, and the nature of the appellate case, utilizing the chi-square test for independence. Challenges such as establishing consumer identity, defining fraudulent behavior, and evaluating the standards of food safety are pivotal issues that impede the equitable treatment of knowingly purchasing counterfeit goods within the food and drug sector. In this distinct domain, the act of knowingly purchasing counterfeit goods, despite potential associations with professional racketeering, often yields a more constructive outcome. If it is determined that the parties involved are not engaged in commercial operations, their status as consumers should be acknowledged. When assessing food safety standards, emphasis should be placed on substantive criteria rather than mere formalities. Moreover, the presence of substantial harm should not be a mandatory threshold for the application of punitive damages. Additionally, if an operator fails to fulfill their evidentiary responsibilities or demonstrates "knowledge" of the counterfeit goods, the consumer's claim for compensation should be upheld.

Keywords: Food and Drug Safety; Knowing and Buying Counterfeits; Same Case, Same Sentence; Empirical Research.

1. Introduction

The report of the 20th CPC National Congress points out that it is necessary to strengthen the supervision of food and drug safety, place the protection of people's health in the strategic position of priority development, improve people's health promotion policies, and promote the construction of a healthy China. China has not only prioritised people's health at the policy level, but has also formulated and improved a series of laws and regulations such as the Food Safety Law of the People's Republic of China (hereinafter referred to as the Food Safety Law), the Law of the People's Republic of China on the Administration of Pharmaceuticals (hereinafter referred to as the Pharmaceuticals Administration Law), and the Law of the People's Republic of China on Protection of the Rights and Interests of Consumers (hereinafter referred to as the Consumer Rights and Interests Protection Law), to effectively The Law of the People's Republic of China on Drug Administration (hereinafter referred to as the Drug Administration Law), the Law of the People's Republic of China on the Protection of Consumers' Rights and Interests (hereinafter referred to as the Law on the Protection of Consumers' Rights and Interests), etc., to effectively safeguard people's safety and consumer rights and interests, and to introduce the system of punitive damages. However, the high compensation amount let some people see the "business opportunities", making the "know fake buy fake" phenomenon is increasingly prominent. The problems arising from the phenomenon of "knowing and buying fakes" in legal practice are also becoming increasingly complex, especially in the definition of consumer status and the application of punitive damages, which has led to the phenomenon of different judgements for the same case frequently appearing in judicial practice, contrary to the principle of fairness and justice in the concept of socialist rule of law in China.

Based on the above background, the article researches the degree of realisation of "knowing buying counterfeit goods" in the field of food and medicine from the aspect of theory and judicial practice, analyses the dilemma of realising "equal sentencing" in cases of knowingly buying counterfeit goods in the field of food and medicine and the reasons for it, and puts forward a specific legal approach based on it. The implementation of concurrent judgements in cases of "knowingly buying counterfeit goods" is of great significance in regulating the market order, safeguarding social justice and ensuring that the fruits of the rule of law are brought to the benefit of the people.

2. Fundamental Issues in Cases of Knowingly Buying Counterfeits in the Food and Drug Field

2.1. Defining "Knowingly Buying a Fake"

The act of knowingly purchasing counterfeits involves a buyer who is aware of the issues with the goods or services yet decides to proceed with the transaction. This behavior typically falls into two categories. The first is known as the "self-sufficiency" type, where individuals, motivated by economic concerns, opt for low-priced goods that, despite their flaws, remain functional. They may also purchase goods in bulk for gifting or display purposes. The second category is the "profit-seeking through claims" type, where individuals, fully aware of the defects in the purchased goods or services, deliberately acquire them with the intent of filing legal claims against the producers or sellers to seek financial compensation. The "self-sufficiency" type represents a rational choice made by consumers and usually does not raise significant legal concerns, thus it is not the focus of this paper. In contrast, the "profit-seeking through claims" type is a subject of considerable interest due to the legal disputes it can provoke. This paper will concentrate on examining this latter type of conduct.

2.2. Cases in the field of food and medicine where the person knows that he is buying counterfeit goods

Table 1. Typical cases of knowing and buying fake in food and pharmaceutical sector

Title of a Case	Grounds of Appeal	Classification
Dispute over Sales Contract of Tea Industry in Weifang High tech Zone Involving Su	The labeling information of tea cakes purchased lacks food production licenses, manufacturers, factory sites, etc., and does not indicate mandatory labeling information in accordance with national laws.	Labeling problem
Dispute over Product Liability between Dong and Hongwei Store in Wendeng District	The Stinky tofu snacks purchased are expired products.	Selling expired products
Dispute over Product Liability Involving Zhu Guilin, Dong Jingjing, and Others	The weight loss products purchased contain harmful substance sibutramine and are three non-products without any manufacturer or production license label.	Labeling problem, Illegal additives
Dispute over Information Network Sales Contract Involving Zhang Baohui and Wu Jiemin	The weight loss products purchased are counterfeit products without factory name, site and production date, and contain toxic and harmful substances sibutramine.	Labeling problem, Illegal additives
Dispute over Product Seller Liability between Chang Dengke and Qi Yaowen	The production license of the weight loss capsule product purchased is not available, and it is a counterfeit and inferior product.	Counterfeit products
Dispute over Sales Contract between Sun Zhongmei and Li Guiling from Lavender Golden Beauty and Health Preservation Workshop in Donggang District, Rizhao City	The purchased product uses promotional language such as killing cancer cells, treating breast hyperplasia, and treating varicose veins, which clearly contains false advertising.	False advertisement

Disputes within the food and medicine sector arise for a variety of reasons, with the primary issues including labeling discrepancies, the use of illegal additives, the sale of expired products, instances of counterfeiting, and the presence of false advertising.

2.3. Legal provisions relating to knowledge of counterfeiting in the field of food and medicine

To address cases effectively, it is imperative to have a thorough grasp of the pertinent legal provisions that will determine the applicability of specific statutes to the facts at hand. In the subsequent section, these legal provisions will be systematically categorized and elucidated. This approach will not only delineate the provisions and their application challenges in an organized manner but also establish a coherent logical framework. This framework will underpin the in-depth analysis in the forthcoming chapters, where we will explore the dilemmas and potential strategies for actualizing the principle of "same case, same judgment."

2.3.1. Provisions Concerning Consumer Status

Article 2 of the "Law on the Protection of Consumers' Rights and Interests" explicitly defines a consumer as a natural person who purchases and utilizes goods from a producer or seller to fulfill personal consumption needs. However, the term "personal consumption" is broadly interpreted and remains ambiguous in practical scenarios. This ambiguity complicates the consistent definition of consumer identity in concrete cases, particularly for those aware of counterfeiting.

2.3.2. Provisions Concerning Punitive Damages

Article 1207 of the "Civil Code of the People's Republic of China" establishes a legal foundation for victims to seek redress and mandates that they may seek punitive damages in instances of severe health harm or fatality caused by defective products. Concurrently, the "ten times the price" and "three times the loss" compensation benchmarks outlined in the "Food Safety Law" and the "Drug Administration Law" aim to impose stiffer penalties on culpable producers and sellers, thereby safeguarding consumer interests. These standards, however, have engendered the "knowingly buying fake" issue. The phenomenon of "purchasing counterfeit products with full knowledge of their status" has emerged. In some instances, buyers have not incurred genuine health damage, and their acquisition behavior is often multifaceted, leading to debates over the appropriateness of applying punitive damages to those who are cognizant of buying counterfeits.

Additionally, Article 3 of the "Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases involving Food and Drug Disputes" (hereinafter referred to as "the Provisions") notes, "In disputes over the quality of food and drugs, the buyer may claim rights against the producer or seller. The operator's defense that the purchaser was aware of the issue but chose to buy anyway will not be upheld." However, does this provision unequivocally endorse the actions of those who knowingly purchase defective products? Or is it meant to underscore the paramountcy of product quality within the food and medicine sectors? A consensus on the interpretation of this provision has yet to be reached.

2.3.3. Provisions Pertaining to Fraud

Article 55, Clause 1, of the "Consumer Protection Act" addresses compensation for fraudulent actions by an operator. Yet, for individuals aware they are purchasing a counterfeit, who are not subjectively deceived and whose actions align with their will, it remains undetermined whether such cases can be deemed to involve fraudulent behavior by the operator.

2.3.4. Relevant Provisions on Food Safety Standards

China's food safety standards are bifurcated into formal and substantive categories. Article 26 of the "Food Safety Law" enumerates specific requirements for food safety standards, which formally regulate various facets of the food production, processing, and sales. Meanwhile, Article 67 provides detailed regulations on the labeling of pre-packaged foods, serving as a formal safeguard for food safety. Article 150 of the "Food Safety Law" encapsulates the concept of food safety, stipulating that

food must be non-toxic, harmless, meet nutritional requirements, and not present any acute, subacute, or chronic risks to human health. This article serves as a substantive criterion for food safety standards regarding the potential substantial health risks posed by food. Given the divergent focal points of the two sets of regulations concerning food safety standards, there is practical contention over determining whether the food in question meets these standards, which introduces uncertainty into judicial decision-making.

2.4. Concurrent judgements in cases of knowledge of counterfeiting in the field of food and medicine

There are a large number of cases in the field of food and medicine in which people know that they have bought counterfeit goods, and the following section will analyse the phenomenon of different judgments in the same case that occurs in practice in the form of cases.

Table 2. Typical Cases of Supporting/Not Supporting Punitive Compensation

Title of A Case	Grounds of Appeal	Amount of compensation requested	Key points of the case	Court view	Result of judgment
Dispute over Sales Contract between Song Yaoyao and Yuhai Food Store in Shizhong District	The milk powder purchased does not have a Chinese label.	Ten times the price: 22000 yuan	The involved goods do not have Chinese labels or entry-exit inspection and quarantine certificates.	The plaintiff has no evidence to prove that the goods involved in the case have quality problems or cause harm to human health. Therefore, the claim for ten times compensation is unfounded by legal basis, and not supported by this court.	Do not support punitive damages of ten times the price
Dispute over Sales Contract between Ding Yuanyuan and Hong Yuting	The goods purchased do not have Chinese labels or entry-exit inspection and quarantine certificates.	Ten times the price: 54600 yuan	The defendant did not provide evidence to prove that the product passed the legal procedures for import filing, customs declaration, and port inspection stipulated in the Drug Import Management Measures.	The defendant sold the drugs involved in the case to the plaintiff without obtaining the relevant procedures for the sold products. According to Article 144, Paragraph 3 of the Drug Administration Law of the People's Republic of China, and Article 15, Paragraph 2 of the Supreme People's Court's Provisions on Several Issues Concerning the Application of Law in the Trial of Food and Drug Dispute Cases, the plaintiff's lawsuit request is supported by the law.	Support punitive damages of ten times the price

Both cases are consumer protection cases caused by labelling problems of food products and the circumstances are very similar. Therefore, these cases can be recognised as the same type of case. In this case, "the same judgement" means that the plaintiff's claim for punitive damages in the two cases was given the same judgement. It is clear that the same judgement was not rendered in these cases. This phenomenon is due to the use of discretion by the judge, the different emphasis on food safety standards and the allocation of the burden of proof on the issue of disagreement, resulting in the same type of cases of punitive damages for the application of different standards. The analysis of the above

cases in the previous section focuses on whether the courts support punitive damages or not, in order to reveal the phenomenon of different judgements in the "knowingly purchasing counterfeits" cases. In the following article, we will analyse the phenomenon of concurrent and divergent judgments in "knowingly buying or selling counterfeits" cases more comprehensively in the form of data analysis.

3. Quantitative analysis of concurrent judgements in cases of knowledge of counterfeiting in the field of food and medicine

3.1. Analysis of "Same Case, Same Sentence"

3.1.1. Data Resources

The search database for this part of the paper was the China Judicial Instruments Network (CJIN). The first search is based on "know fake buy fake" "food", the search conditions are: date - 1 February 2015 - 1 February 2024, court level -- Basic Court, Territory -- Shandong Province, Type of Instrument -- Judgement. This search showed a total number of 117 relevant cases. The second search was based on Article 3 of the Provisions, with the same search conditions as above. This search showed a total of 93 relevant cases. Among the cases displayed in the two searches, 100 instruments were selected for downloading by using a random number method, combining both the availability of information on the instruments and the readability of the cases.

Whether it is a case of knowledge of counterfeiting or not can usually be judged on the basis of whether or not the defendant has pleaded that the plaintiff has committed the act of knowledge of counterfeiting or whether or not the court has ex officio searched for cases in which the plaintiff has claimed punitive damages in courts around the world. The first search basis reflects the above thinking.

However, because the defendant's defence or the court's review does not necessarily cover all the "knowingly purchasing" cases, purely based on the "knowingly purchasing" as the basis for searching, the knowingly purchasing cases may not be comprehensive. For cases involving food and drugs, the judgement will refer to Article 3 of the Provisions, so the second type of search is based on this article, and the resulting data will be more comprehensive.

3.1.2. Variables

By interpreting the constituent elements of punitive damages in the Food Safety Law and the reasons for the judgement of the adjudication instruments, this part of the paper will summarise the variables that affect the outcome of the judgement and assign weights to these variables. According to Article 148, paragraph 2 of the Food Safety Law, "the production of food that does not meet food safety standards or the operation of food that is known to be not in compliance with food safety standards, the consumer", it can be learnt that the constituent elements of punitive damages include: the identity of the consumer, the operator's "knowledge" of the food safety standards and the reasons for the judgement of the adjudication instruments. The operator "knowingly"/producer produces goods that do not meet food safety standards, does not meet food safety standards. Non-compliance with food safety standards can be interpreted in two ways, one is the existence of formal violations, and the other is the existence of circumstances affecting food safety or misleading consumers. According to the proviso in Article 148 of the Food Safety Law, non-compliance with food safety standards in the abovementioned constituent elements should be interpreted in the second way. At the same time, taking into account the reasons for the judgement on refund in the instrument, this part takes non-compliance with food safety standards in a broad sense as its influencing factor. Given that the above factors are elements of both punitive damages and refunds, and that they are of equal status, they are given the same weight. In summary, the following variables and assignments are derived:

(1) Consumer status of the purchaser, with a value of 0.25 assigned for affirmative cases and 0 otherwise;

(2) Operator's "knowledge" of producing non-compliant goods, weighted at 0.25 for affirmative instances and 0 for negative;

(3) Presence of circumstances affecting food safety or misleading consumers, scored at 0.25 for affirmative cases and 0 otherwise;

(4) Existence of mere formal violations, with a value of 0.25 for affirmative cases and 0 for negative.

3.1.3. Data Process

This section analyzes 100 instruments, focusing on the variables within. To ensure the analysis's operability, comparability, and the accuracy of the outcomes, uniform judgment criteria are mandatory. The viewpoints articulated in Part V of this paper are adopted as the criteria due to their clear and explicit logical structure, alignment with current laws, regulations, and policy directives.

During the judgment analysis, if the first three influencing factors in an instrument are affirmed ("yes"), their corresponding variable values accumulate. If one of the first two factors is negated ("no"), the value of the subsequent variable is automatically nullified (indicating the absence of a constitutive element), with the remaining factors and their respective variable values added according to the case specifics. This methodology resulted in 100 distinct data sets, with 67% meeting the criteria for punitive damages, 19% qualifying for refunds, and 14% fulfilling none of the conditions. A sample of the data is presented below.

The aforementioned 100 data sets were categorized, with identical values grouped together, potentially dividing into three cohorts, thereby isolating similar cases.

Table 3. Partial Data Display

Number	Case number	A	B	C	D	The sum of variable values
1	(2023) Lu 1726 No.577	0.25	0.25	0.25	0	0.75
2	(2022) Lu 0114 No.6476	0	0	0	0.25	0.25
3	(2022) Lu 0191 No.2531	0.25	0.25	0.25	0	0.75
4	(2023) Lu 1122 No.1587	0.25	0.25	0.25	0	0.75
5	(2023) Lu 1522 No.5501	0	0	0	0	0
6	(2023) Lu 0827 No.1221	0.25	0.25	0.25	0	0.75
7	(2023) Lu 1502 No.2673	0.25	0.25	0.25	0	0.75
8	(2022) Lu 0124 No.2045	0	0	0	0	0
9	(2022) Lu 0785 No.4925	0.25	0.25	0.25	0	0.75
10	(2020) Lu 0902 No.3992	0	0	0	0	0
11	(2022) Lu 0891 No.957	0.25	0.25	0.25	0	0.75

Note:

A: Whether the buyer is a consumer

B: Whether the operator is "aware" whether the producer produces goods that do not meet food safety standards

C: Whether there are situations that affect food safety or mislead consumers

D: Whether there is only a formal violation

The above 100 sets of data were categorised and the same values were divided into one group, which could be divided into three groups, thus i.e., the same cases were obtained.

3.1.4. Results

If there are more categories in the same group, it indicates that the degree of equal judgement is less satisfactory; if there is only one outcome, it indicates that the degree of equal judgement is excellent, and that the principle of fairness and justice has been fully implemented and effectively enforced. If the number of categories in the same group is distributed differently, it indicates that the proportion of equal judgement is larger, and vice versa, it indicates that the phenomenon of different judgements in the same case is more serious. The following is a breakdown of the results in each group.

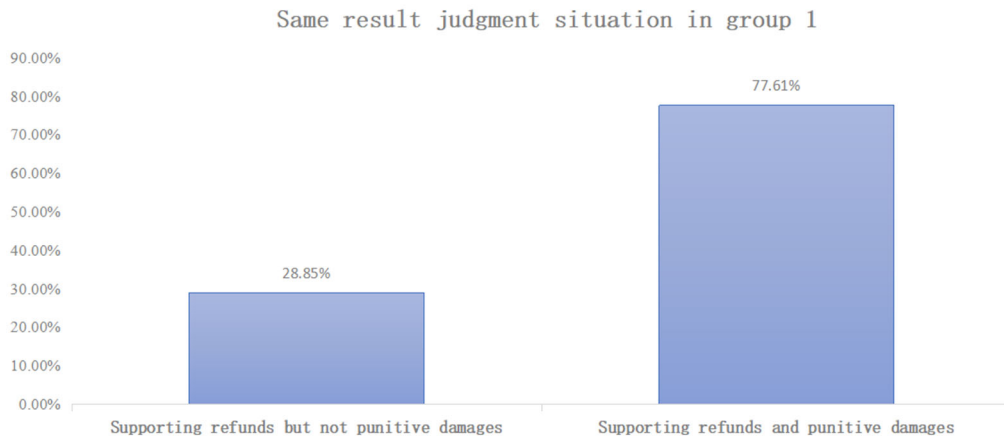


Figure 1. Same result judgment situation in group 1

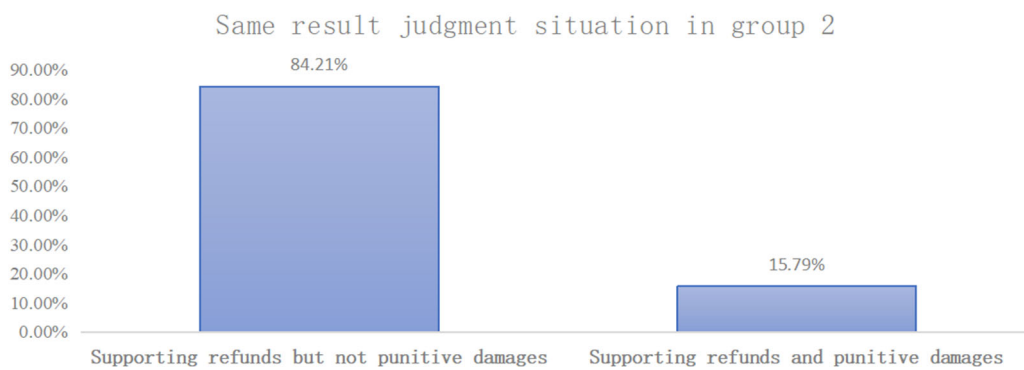


Figure 2. Same result judgment situation in group 2

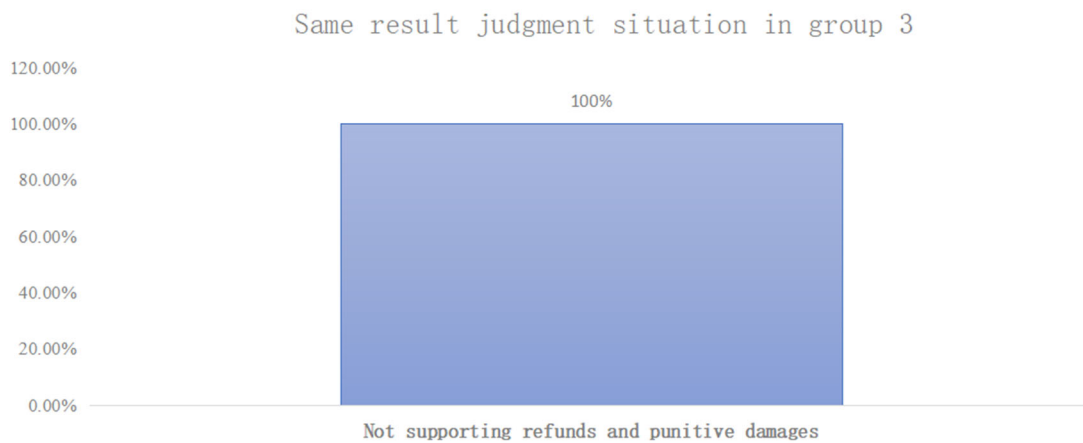


Figure 3. Same result judgment situation in group 3

In Group 3, there is only one judgement, which shows that the principle of equal judgement in the same case has been achieved and the value of legal equality has been well reflected. Groups 1 and 2 have two judgements, which is less satisfactory in terms of the number of categories. Further analysing the proportion of equal judgements in the two groups, using more than half of the judgements in each group as a criterion, those belonging to such results are considered to have received equal judgements, and vice versa. Looking at the above statistical chart, the percentage of cases with concurrent judgements in Group I is 77.61 per cent, while the percentage of cases with concurrent judgements in Group II is 84.21 per cent. Compared to Group II, the number of results in Group I is more evenly distributed, indicating that the phenomenon of concurrent judgement is relatively more serious.

In order to find out the reasons for this, by reviewing the cases with different judgments in each group, it is found that most of the cases have the suspicion that the plaintiffs have the knowledge of buying fake products, most of the appeals are about labelling, and the operators fail to bear the burden of proof, and so on. In the following section, the chi-square test will be used to verify whether the above factors have a significant effect on the same judgement in the same case.

3.2. Factors of “Same Case, Same Sentence”

3.2.1. Method

The contingency table independence test, also known as the chi-square test, is primarily utilized to examine whether there is an association between categorical variables, specifically to determine if two categorical variables are independent. This section of the paper employs this method to discern whether there is a significant correlation between the aforementioned factors and the principle of consistent judgment in similar cases.

The chi-square test falls under the category of nonparametric tests within the framework of hypothesis testing. Following the logic of hypothesis testing, the steps of the chi-square independence test are as follows:

Formulate the null hypothesis and the alternative hypothesis.

Under the assumption that the null hypothesis holds, select an appropriate test statistic χ^2 and determine the rejection region based on the significance level and degrees of freedom by consulting relevant tables. The following is the formula for calculating the statistical measure χ^2 :

$$\chi^2 = \sum_{i=1}^r \sum_{j=1}^c \frac{(n_{ij} - n\hat{p}_{ij})^2}{n\hat{p}_{ij}}$$

Substitute the sample data into the formula for the test statistic to observe whether the result falls within the rejection region, thereby making a judgment on the independence of the two categorical variables.

Alternatively, one can assess whether the P-value from the chi-square independence test is less than the significance level (commonly set at 0.05). If the P-value is indeed lower, the null hypothesis can be rejected, indicating an association between the two variables.

3.2.2. Analysis

To facilitate the aforementioned testing process and to present the results more comprehensively and accurately, this section employs the professional statistical analysis software SPSS (Statistical Product and Service Solutions) for the operations. The test results are as follows:

Table 4. Chi-square analysis of the suspected and co-convicted cases of knowing and buying fake behavior

		Co-vary sentence	Same case same verdict	Total
There is no suspicion of knowing and buying fake products	Count	1	28	29
	%	3.45%	96.55%	100.00%
There is suspicion of knowing and buying fake products	Count	17	54	71
	%	23.94%	76.06%	100.00%
Total	Count	18	82	100
	%	18.00%	82.00%	100.00%
Pearson Chi-Square	Value		5.860	
	df		1	
	Asymptotic Significance (2-sided)		0.015	

Table 5. Chi-square analysis of the evidence and co-judgment of the operators

		Co-vary sentence	Same case same verdict	Total
The operator failed to prove	Count	17	49	66
	%	25.76%	74.24%	100.00%
Operators can prove	Count	1	33	34
	%	2.94%	97.06%	100.00%
Total	Count	18	82	100
	%	18.00%	82.00%	100.00%
Pearson Chi-Square	Value		7.915	
	df		1	
	Asymptotic Significance (2-sided)		0.005	

Table 6. Chi-square analysis of the problem situation and the co-judgment situation

		Co-vary sentence	Same case same verdict	Total
Non-labeling problem	Count	3	34	37
	%	8.11%	91.89%	100.00%
Labeling problem	Count	15	48	63
	%	23.81%	76.19%	100.00%
Total	Count	18	82	100
	%	18.00%	82.00%	100.00%
Pearson Chi-Square	Value		3.893	
	df		1	
	Asymptotic Significance (2-sided)		0.048	

As shown in the table4, $p=0.015<0.05$ indicating that there is a significant difference in the impact of the presence or absence of suspicion regarding the act of knowingly purchasing counterfeit products on the consistency of judgment. The rate of inconsistent judgment when suspicion exists is 23.94%, and when no suspicion exists, it is 3.45%. Given that $p<0.05$, we reject the null hypothesis and conclude that there is a significant correlation between the suspicion of knowingly purchasing counterfeit products and the principle of consistent judgment in similar cases. From Tables 5 and 6, it can be seen that their p-values are both less than 0.05, leading to the same conclusion: the evidentiary situation presented by the business operator is significantly correlated with the appeal case reasons and the consistency of judgment in similar cases. Specifically, if the business operator can provide evidence, the likelihood of consistent judgment in the case is higher; conversely, it is lower. For cases involving non-label issues, the likelihood of consistent judgment is greater. In contrast, for cases involving label issues, the likelihood of consistent judgment is smaller.

In summary, this section of the paper has completed an analysis of the extent to which consistent judgment is achieved in cases of knowingly purchasing counterfeit products in the food and drug sector and has tested the influencing factors. In the following section, the paper will provide a detailed interpretation of the dilemmas caused by the aforementioned influencing factors and propose corresponding solutions.

4. Challenges in Achieving "Same Case, Same Sentence" in Cases of Knowingly Purchasing Counterfeit Products in the Food and Drug Sector

4.1. Controversy over the Identification of Those Who Knowingly Purchase Counterfeit Goods

Regarding the definition of a consumer, Chinese law does not provide a clear stipulation. Currently, courts mainly rely on Article 2 of the "Consumer Rights Protection Law" for judgment, which states that individuals who purchase and use goods or receive services to meet their personal consumption

needs should be considered consumers. However, the concept of "personal consumption" has sparked controversy in judicial practice. Some scholars argue that any consumption not for production purposes should be deemed personal consumption. This viewpoint starts from the objective behavior of the purchaser; as long as the food or drugs they buy are not used for production and business operations, the purchaser should be identified as a consumer.

Other scholars believe that to fully protect consumer rights, a broad interpretation of personal consumption should be adopted. They argue that failing to consider the complexity of the behavior of those who knowingly purchase counterfeit goods leads to the quagmire of "free law theory."

As mentioned earlier, the act of knowingly purchasing counterfeit goods can be divided into two types: "self-sufficiency" and "profit-seeking through claims." Clearly, the subjective purpose of the former is consumption, while the latter aims to profit by claiming compensation through legal means, which does not fall under the category of personal consumption. Therefore, considering the subjective aspect of the purchaser, those who buy problematic goods or accept flawed services for the purpose of profit and then claim compensation should not be included within the scope of consumers.

Currently, with the increasing prominence of the phenomenon of knowingly purchasing counterfeit goods, it is necessary for China to clarify the criteria for identifying the status of consumers at the legislative level. This would help to clearly define the identity of those who knowingly purchase counterfeit goods and provide a clear basis for judicial practice.

4.2. Misconceptions Regarding the Deceptive Acts of Operators

Prerequisite for the application of punitive damages is the existence of a deceptive act by the operator. However, there is a divergence of opinions among different courts regarding the determination of deceptive acts by operators. Some courts focus on the subjective aspect of the operator, stating that a deceptive act is constituted only if the operator intentionally sells goods that do not meet food safety standards and the consumer purchases such goods. Other courts pay attention to the subjective aspect of those who knowingly purchase counterfeit goods, arguing that they have not been misled by the operator and have not acted against their will based on a misunderstanding, hence such cases should not be deemed as involving deceptive acts by the operator.

4.3. Divergence in Perspectives on Substantial Damage

Whether "ten times the price" compensation is applicable when the consumer has not suffered substantial damage. Some courts do not support punitive damages because the plaintiff cannot provide evidence of substantial physical harm.

There is currently no consensus on whether punitive damages should be predicated on substantial damage. Some scholars believe that punitive damages are not intended to compensate for the losses suffered by consumers; their true purpose is deterrence, and the right to punitive damages should be regarded as an independent claim.

4.4. Classification of Food Safety Standard Assessment

There are numerous cases where those who knowingly purchase counterfeit goods file lawsuits on the grounds of label issues with the food purchased. In such cases, the question of whether to adopt substantive or formal standards for the assessment of food safety standards is a major point of contention in judicial practice regarding cases of knowingly purchasing counterfeit goods. Most courts emphasize the use of substantive standards, taking the definition of "food safety" in Article 150 of the "Food Safety Law" as the primary basis for judgment. They argue that label issues are not directly related to the quality of the food itself, and if there is no substantial harm to human health, even if there is a formal violation, the plaintiff's claim for compensation should not be supported. Regarding formal standards, some courts will make a comprehensive judgment on the label issues of food in conjunction with relevant provisions such as Article 26 of the "Food Safety Law," believing that an operator selling goods with label issues may not meet food safety standards but may not

necessarily violate food safety, necessitating evidence from the operator or the consumer regarding the label issues. This also leads to the issue of the allocation of the burden of proof.

In judicial practice, the aforementioned divergent views and the issue of the allocation of the burden of proof further increase the difficulty of achieving consistent judgments in similar cases.

5. Legal Approaches to Achieving "Same Case, Same Sentence" in the Food and Drug Sector's Counterfeit Knowledge Cases

5.1. The Identification of Those Who Knowingly Purchase Counterfeit Goods

The literal interpretation of "consumer" as outlined in Article 2 of the "Consumer Rights Protection Law" eludes precise definition. However, the intent behind the legislation is clear: to safeguard the legitimate rights and interests of consumers and to regulate market order. To outright deny the consumer status of those who knowingly purchase counterfeit goods would be to absolve operators of their legal responsibilities for intentionally selling products that do not meet food safety standards. In the special domain of food and medicine, such a stance would not only embolden unlawful operators and pose safety risks to the public but also place those who knowingly purchase counterfeit goods in a more vulnerable position, making it more difficult for consumers to defend their rights. This clearly contradicts the purpose of Article 2 of the "Consumer Rights Protection Law."

Analyzing from both subjective and objective perspectives, the act of knowingly purchasing counterfeit goods only indicates the buyer's level of awareness of the product, making their subjective intent challenging to ascertain. In judicial practice, determining consumer status based solely on the buyer's subjective state is often inaccurate. Therefore, this paper argues that an objective approach should be taken, analyzing whether the act of knowingly purchasing counterfeit goods constitutes illegal business conduct to determine if they are consumers.

Consumers are entities in contrast to operators. According to Article 2 of the "Anti-Unfair Competition Law" of the People's Republic of China, an operator is defined as a natural person, legal person, or unincorporated organization engaged in the production, operation, or provision of services. Consequently, business conduct can be interpreted as actions taken with the purpose of profit in commercial activities. As long as those who knowingly purchase counterfeit goods do not objectively engage in business activities with the purchased goods, they can be excluded from being classified as operators and naturally recognized as consumers.

However, due to the negative impact of those who knowingly purchase counterfeit goods, the view that they possess consumer status should not be affirmed without question. In judicial practice, the suspicion of such behavior can be assessed by examining the buyer's use, quantity, frequency, number of legal disputes, and the entities targeted. If an individual who knowingly purchases counterfeit goods initiates multiple lawsuits against the same operator to seek compensation, this behavior reveals a purely profit-driven motive without positive implications, and courts should not recognize them as fitting the consumer profile, thus not supporting their claims for compensation. Conversely, for those who engage in anti-counterfeiting activities across various regions, targeting different entities each time, although such actions may disrupt market order, they also serve to purify the market environment, supplement governmental regulatory efforts, and break through the predicaments of consumer rights protection. The latter's value far outweighs the former, and thus, such individuals who knowingly purchase counterfeit goods should be recognized as consumers. In this regard, this paper suggests that the behavior of knowingly purchasing counterfeit goods should be guided and regulated to maximize its positive impact.

5.2. Distinguishing Deceptive Acts by Operators

The "Consumer Rights Protection Law" does not provide an interpretation of deceptive acts. According to Article 68 of the "Provisional Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China," there

are four elements that constitute a deceptive act: (1) the operator has a subjective intention to deceive; (2) the operator objectively states incorrect facts or intentionally conceals the truth; (3) the consumer is misled as a result; and (4) the consumer acts based on this misunderstanding. In practice, the causal relationship between the act of knowingly purchasing counterfeit goods and deception does not hold. The idea to purchase and the act of doing so by those who knowingly purchase counterfeit goods are not provoked by the operator's conduct but are based on their subjective understanding of the product at the time of purchase. Therefore, knowingly purchasing counterfeit goods does not constitute a deceptive act and does not meet the requirements for punitive damages. However, in the special domain of food and medicine, where the safety of food and drugs is directly related to the health and even the lives of the people, their safety issues cannot be ignored, and the rules for punitive damages in the general consumer domain should not be simply applied. According to Article 148 of the "Food Safety Law," the provisions on punitive damages emphasize "knowing" rather than deceptive acts. Since consumer behavior cannot influence the operator's "intentional act," the law places particular emphasis on the operator's subjective aspect, with no requirements made for the consumer's subjective understanding. Article 3 of the "Regulations" states that courts do not support the operator's defense of claiming the purchaser "knew" as a reason. These provisions aim to regulate the conduct of operators, ensure food safety, and protect the health of the people. Therefore, deceptive acts should be understood in a broader sense, where an operator's intentional sale of products that do not meet food safety standards constitutes deception.

In summary, in cases of knowingly purchasing counterfeit goods in the food and medicine domain, the act of an operator intentionally selling products that do not meet food safety standards should be deemed a deceptive act. If the operator fails to fulfill their legal obligations, according to Article 6 of the "Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Disputes over Food Safety (I)" [Article 6 of the "Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Disputes over Food Safety (I)"] states: "If a food operator has one of the following circumstances, and the consumer claims that it constitutes 'knowledge' as stipulated in Article 148 of the Food Safety Law, the people's court shall support it: (1) continues to sell food after the expiration date indicated on the label; (2) fails to provide a legitimate source of the food sold; (3) purchases food at an obviously unreasonable low price without a reasonable cause; (4) fails to perform the due diligence obligation for food procurement; (5) falsely marks or alters the food production date, batch number; (6) transfers, conceals, or illegally destroys food sales and purchase records or intentionally provides false information; (7) other circumstances that can be determined as 'knowledge.'", this behavior is still considered "knowledge." If the operator engages in behavior beyond the provisions mentioned above, it can be determined that they did not violate intentionally but were merely negligent, constituting an "unintentional act," and thus does not constitute a deceptive act, and the rules for punitive damages do not apply.

5.3. Application of Substantial Damage

Punitive damages serve to punish, deter, and compensate, with the compensatory function filling the actual harm suffered by consumers, which is encompassed by general compensatory damages. It follows that punishment and deterrence are the primary focuses of punitive damages, and their application does not necessitate substantial damage to the consumer as a prerequisite.

Analyzing the purpose of introducing punitive damages in the "Food Safety Law," the aim is to impose a strong punishment on unlawful operators through high compensation amounts to achieve a powerful deterrent effect, thereby curbing unlawful conduct. Additionally, punitive damages also provide consumers with greater motivation to defend their rights, encouraging them to actively protect their legitimate rights and interests and combat unlawful practices by operators. If substantial damage to the consumer were a prerequisite for the application of punitive damages, the deterrent effect on unlawful operators and the encouragement for consumers to actively protect their rights would be significantly reduced.

Furthermore, the two provisions of Article 148 of the "Food Safety Law" set the conditions for the application of punitive damages. The first provision states, "Consumers who suffer damage due to food not meeting food safety standards may demand compensation for losses from the operator or the producer," which clearly pertains to compensatory damages, compensating for actual losses caused by the use of goods or services by the consumer. The second provision states, "They may demand ten times the price or three times the loss in compensation from the producer or operator; if the increased compensation amount is less than one thousand yuan, it shall be one thousand yuan," which is punitive damages, emphasizing the operator's "knowledge" without mentioning whether the consumer has suffered substantial damage. It is evident that the two provisions are independent, and the application of punitive damages does not rely on the establishment of compensatory damages.

5.4. Focus on the Assessment of Food Safety Standards

Regarding food with labeling issues, the assessment of safety standards differentiates between substantive and formal norms. If merely the formal norm, that is, not meeting certain specific requirements of food safety standards, were considered a component of punitive damages, it could lead to over-implementation of the punitive damages system, causing a multitude of unnecessary lawsuits and wasting judicial resources. However, if only the results of the substantive norm, which cause substantial harm to human health, were considered a requirement for punitive damages, it would narrow the scope of punitive damages in the food and medicine field. Therefore, to effectively leverage the punitive and deterrent functions of punitive damages and reduce their overuse, the assessment of food safety standards should primarily focus on substantive norms, supplemented by formal norms. Starting from the formal issues of food, evidence should be considered to assess potential quality and safety problems. The substantive norms here mainly refer to meeting the requirements of food quality and safety, not taking substantial harm to the human body as the standard.

For example, food with labeling issues may formally not comply with food safety standards but does not necessarily violate "food safety" and may fall under the provisions of Article

6. Conclusion

Frequent instances of knowingly purchasing counterfeit goods in the food and drug sector lead to inconsistent rulings for similar cases, a phenomenon that not only erodes the authority of the law but also compromises judicial fairness, contradicting the principles of fairness and justice. This paper, therefore, begins with a theoretical examination of the fundamentals of counterfeit knowledge within the food and drug domain. Following this, it analyzes 100 randomly selected judicial documents from Shandong Province, undergoing a data-driven analysis that reveals the current state of achieving consistent judgments—unfortunately, the findings are less than satisfactory. To identify the causes, the paper examines cases to uncover factors that may influence consistent rulings and employs a chi-square test for independence to confirm the significant impact of suspected counterfeit activities, the burden of proof, and the nature of appeals on the uniformity of judgments.

The ensuing discussion delves into the primary challenges stemming from these factors, including the identification of consumer status, the constitution of fraudulent acts, and the assessment of food safety standards, offering corresponding legal remedies for the dilemmas surrounding consistent judgments. In the unique context of the food and drug sector, purchasers who knowingly engage in counterfeit transactions, although potentially professional racketeers, may provide a more valuable positive effect. Their consumer status should be acknowledged unless their business conduct is absent. For foods that do not formally adhere to safety standards, while potentially not violating "food safety," the application of punitive damages should not be predicated on the presence of substantial harm. Additionally, operators who fail to meet their evidentiary burden or are found to have "knowledge" should support the consumer's claim for compensation.

To enhance the consistency of judgments in food and drug cases, concerted efforts are required at both the legislative and judicial practice levels. At the legislative level, there is a need for clarity in

legal concepts. In judicial practice, specific case circumstances must be thoroughly considered, legal principles and the spirit of legislation adhered to, and judicial supervision and controls strengthened. Moreover, amid the commercialization trend of counterfeit activities, it is imperative to regulate and guide the behavior of those knowingly purchasing counterfeit goods to maximize their positive contributions. Legal education and public awareness campaigns should be intensified to help delineate the legal and illegal boundaries of such actions, ensuring their constructive role. Individuals who engage in extortion, fraud, and other unlawful acts under the guise of knowing counterfeit purchases should face stringent legal repercussions.

While the empirical research component of this paper has yielded certain outcomes, there are areas for improvement. Future research can refine judgment criteria, broaden the scope of data collection, and offer enhanced theoretical guidance for judicial practice. This will progressively promote consistent judgments, bolster judicial fairness, and steer the rule of law in China toward a more promising future.

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