

The Legal Application of "Professional Anti-Counterfeiting Litigants": A Possible Pathway Based on Big Data Analytics

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Abstract: Professional anti-counterfeiting litigants, as a special group within consumer protection, have long been a subject of controversy regarding their legal status and the applicability of punitive damages. Traditional research has predominantly relied on qualitative analysis, categorizing their actions as either "reasonable consumption" or "malicious litigation," yet it lacks quantitative standards for scientific judgment. This paper proposes a possible pathway based on big data analytics. By integrating consumer purchase data, merchant sales records, and related complaint information, and employing statistical testing methods for quantitative analysis of the actions of professional anti-counterfeiting litigants, the study finds that this method can effectively distinguish between reasonable and abnormal purchases, thereby providing an objective basis for the application of punitive damages. The paper further proposes a "limited recognition" compromise: applying punitive damages to purchases of a reasonable magnitude, while handling the excess portion under the Contract Part of the Civil Code. This approach balances the protection of consumer rights with the prevention of rights abuse. This research provides a computational jurisprudence method for identifying professional anti-counterfeiting litigants and applying punitive damages, and also offers a reference for improving China's legal system for consumer protection.

Keywords: Professional Anti-counterfeiting Litigants, Consumer Protection Law, Big Data Analytics, Computational Jurisprudence

Introduction

With the continuous development of the market economy, the protection of consumer rights and interests has garnered increasing attention from all sectors of society. Particularly in areas such as food and pharmaceuticals, which are crucial to public safety and welfare, professional anti-counterfeiting litigants, as a special category of consumers, play a significant role in promoting market order and safeguarding consumer rights. However, the legality and legal status of these litigants, who engage in "knowing purchases" of counterfeit or substandard goods, remain contentious. While the current Consumer Rights Protection Law (hereinafter "CPL") and Food Safety Law provide remedies through punitive damages for consumers, defining whether professional anti-counterfeiting litigants are entitled to such rights remains a challenge in both academic discourse and judicial practice.

The system of punitive damages serves as a legal instrument aimed at punishing unlawful acts to deter misconduct and protect consumer rights. However, when applied to the specific group of professional anti-counterfeiting litigants, the traditional punitive damages mechanism faces several challenges. On one hand, these litigants may exploit legal loopholes through mass purchases to seek compensation, potentially leading to abusive litigation and a waste of judicial resources. On the other hand, their activities can complement market regulation and positively deter merchant misconduct. Therefore, balancing the reasonable application of punitive damages with ensuring market fairness and judicial efficiency constitutes a pressing issue.

This paper aims to explore the application of punitive damages to professional anti-counterfeiting litigants and proposes an optimized pathway based on big data analytics. By utilizing big data technology for quantitative analysis of the behavioral patterns of these litigants, this paper introduces a precise review standard, offering theoretical support for the rational application of punitive damages. Through this data-driven approach, the paper seeks to provide innovative solutions for determining the legal status of professional anti-counterfeiting litigants and applying punitive damages, while also contributing to the improvement of China's consumer protection legal framework.

1. Academic Controversies on Approaches to Regulating Professional Anti-counterfeiting Litigants

Professional counterfeit claimants, as a special group in consumer rights protection, have long sparked extensive controversies in both academic and practical circles. Regarding whether professional counterfeit claimants should enjoy the right to claim punitive damages, different scholars and judicial practices have put forward diverse positions, which can be mainly divided into two major viewpoints: the affirmative theory and the negative theory.

The affirmative theory holds that professional counterfeit claimants, as part of consumers, should enjoy the same legal protection as ordinary consumers when encountering fraud in goods or services, including the right to claim punitive damages. Proponents of this view argue that professional counterfeit claimants, by exposing

fraudulent practices in the market through legal means, help protect the legitimate rights and interests of the general public and purify the market environment. Therefore, punitive damages not only protect consumers but also punish and deter egregious commercial conduct. Scholars supporting this view point out that Article 49 of China's Consumer Rights Protection Law explicitly stipulates that consumers may demand compensation for losses and obtain punitive damages when subjected to fraudulent acts, without restricting who can be considered a "consumer" entitled to this right. In addition, relevant provisions in the Food Safety Law and the Tort Liability Law have further expanded the scope of application of punitive damages, including serious damages caused by product quality issues, which also provide a legal basis for professional counterfeit claimants to file claims for punitive damages. For example, the 2014 case of Sun Yinshan v. Auchan Supermarket clearly stated that professional counterfeit claimants enjoy the same legal status and right to compensation as ordinary consumers. These judicial precedents provide empirical support for the affirmative theory, holding that the conduct of professional counterfeit claimants is public-spirited and consistent with the legislative intent of consumer rights protection.^[1]

Contrary to the "affirmative view," the "negative view" contends that, under textual interpretation, professional anti-counterfeiting litigants should not be considered "consumers" under the CPL, as their purchases are not for consumption purposes. Their actions are driven by profit rather than safeguarding the consumer environment, posing a risk of legal abuse.^[2] Proponents argue that these litigants often engage in "knowing purchases" to exploit legal loopholes for excessive litigation to obtain punitive damages, thereby wasting judicial resources and distorting market order.

In practice, the "negative view" finds support in the Supreme People's Court's Official Reply (Fa Ban Han [2017] No. 181), which stated: "The actions of professional anti-counterfeiting litigants seriously violate the principle of good faith, disregard judicial authority, and waste judicial resources. This court does not support such a governance model that counteracts illegality through illegitimate means, which is akin to drinking poison to quench thirst." The Supreme People's Court's opinion clearly indicates that repeatedly purchasing defective products or fabricating facts for extortionate rights protection not only contradicts the purpose of consumer protection but may also exert unjust pressure on the normal operations of merchants. Consequently, the Supreme Court indicated that, except in special fields like food and pharmaceuticals, professional anti-counterfeiting actions should not be subject to the punitive damage provisions of the CPL. However, the Official Reply did not provide a specific explanation for determining what constitutes "repeated" purchases.

Beyond the judiciary, regulatory authorities have also adopted a relatively negative stance. In August 2016, the State Administration for Industry and Commerce (now the State Administration for Market Regulation) published the Draft Regulations on the Implementation of the Consumer Rights Protection Law (Draft for Comments), Article 2 of which stated that "acts of purchasing, using goods, or receiving services for profit-making purposes shall not be subject to these Regulations." This provision was interpreted as defining the scope of application of the CPL, potentially excluding

^[1] Chengtang Wang. "Regulatory Logic of the Litigation Qualification of Professional Anti-counterfeiting Litigants." *Jurisprudence*, 2018, (11): 61-74.

^[2] Feihu Ying. "Prohibition or Restriction? A Study on the Regulation of 'Knowing Purchases of Counterfeit Goods'." *Legal Review*, 2019, 37(04): 63-78.

"knowing purchases" from its protection.^[3] On November 26, 2012, the former General Administration of Quality Supervision, Inspection and Quarantine publicly solicited comments on the Measures for Handling Product Quality Complaints (Draft for Comments). Article 7 listed eight circumstances under which quality and technical supervision departments would not accept product quality complaints, including situations where "the complainant knew or should have known about the quality issues in the complaint at the time of purchase," thereby excluding knowing purchasers from the complaint handling process. While this was only a draft for comments, it represented the first negative legislative signal from Chinese regulatory bodies regarding knowing purchases. However, the Measures for Handling Product Quality Complaints (Draft for Comments) has yet to be formally promulgated.^[4]

Furthermore, in practice, some court judgments have held that the "knowing purchase" behavior of professional anti-counterfeiting litigants constitutes abusive litigation, violating the principle of good faith, and thus should preclude their right to claim punitive damages.^[5] The aforementioned 2016 draft CPL Implementation Regulations also explicitly stated that "acts of purchasing goods for profit-making purposes and claiming compensation shall not be subject to these Regulations," aiming to exclude the possibility of professional anti-counterfeiting litigants invoking the CPL.

Most of the aforementioned academic or practical viewpoints are based on qualitative analyses, exploring the definition and identification of professional anti-counterfeiting litigants or their actions solely on a semantic level. However, lacking quantitative tools, they fail to effectively distinguish the reasonableness of these litigants' actions or determine the appropriate application of punitive damages. Specifically, both the "affirmative" and "negative" views share similar limitations. The "affirmative view," while asserting that professional anti-counterfeiting litigants should receive equal legal protection, particularly the right to claim punitive damages, relies heavily on qualitative judgments. It lacks quantitative analysis of the volume of their activities and sufficient justification for the reasonableness of their actions. For example, there is no effective standard for defining the quantitative boundary between "reasonable consumption" and "professional anti-counterfeiting." The "negative view" emphasizes the profit-driven nature of their actions and the risks of legal abuse, leading to unnecessary waste of judicial resources and market distortion. Although this view highlights these risks, its qualitative analysis similarly lacks sufficient quantitative tools to define what constitutes "repeated malice." While judicial precedents and regulatory interpretations provide some support, they fail to offer standardized, data-driven methods for judgment, limiting the applicability and practicality of this theoretical framework.

The scarcity of quantitative tools in traditional legal research hinders the scientific differentiation of professional anti-counterfeiting litigants' actions from genuine consumer behavior.^[6] Consequently, both the "affirmative" and "negative" views

^[3] Baoyu Liu, Zhenhua Wei. "Theoretical Interpretation and Legal Application of 'Knowing Purchases of Counterfeit Goods'." *Legal Forum*, 2017, 32(03): 62-73.

^[4] Feihu Ying. "Prohibition or Restriction? A Study on the Regulation of 'Knowing Purchases of Counterfeit Goods'." *Legal Review*, 2019, 37(04): 63-78. (Note: Same as [2] in the original)

^[5] Peng Wu. "The Anomie of Good Faith in Professional Anti-counterfeiting and Its Governance – Taking Food Safety as an Example." *Journal of Capital Normal University (Social Sciences Edition)*, 2022, (04): 79-85.

^[6] Xifen Lin, Zheng Li. "On the Global Development Trend of Computational Jurisprudence." *Journal of Shanghai Jiao Tong University (Philosophy and Social Sciences Edition)*, 2024, 32(06): 48-62.

primarily rely on legal provisions and case law for qualitative assessments or normative analyses, essentially repeated exercises in textual interpretation lacking quantitative behavioral analysis. This leads to ambiguity in judging whether the application of punitive damages to professional anti-counterfeiting litigants is reasonable and makes it difficult to implement operational standards. For instance, the boundary between "reasonable consumption" and "professional anti-counterfeiting" would benefit from more precise statistical methods, such as quantitative delimitation through big data analytics, thereby avoiding subjective bias and unfair adjudication.

Therefore, this paper proposes an analytical pathway based on big data analytics, offering a new demarcation line between the "affirmative" and "negative" views. This pathway employs statistical methods and other testing tools for quantitative analysis of the purchasing behavior of professional anti-counterfeiting litigants, scientifically assessing whether their actions meet the conditions for punitive damages. This approach enables a more precise determination of the applicability of punitive damages on an objective statistical basis, while simultaneously preventing abusive litigation and excessive protection.

2. Big Data Analytics and the Precise Regulation of Professional Anti-counterfeiting Litigants

With the rapid advancement of technology, big data analytics is increasingly being applied across various sectors. Particularly in social governance and legal practice, the introduction of big data offers novel solutions to traditional legal application problems. For the specific group of professional anti-counterfeiting litigants, how to precisely identify their behavioral patterns through big data and scientifically define the scope of punitive damages is a crucial issue in current legal practice. This paper proposes a governance pathway based on big data analytics, aiming to provide theoretical support and practical methods for the reasonable application of punitive damages through quantitative analysis and data-driven decision-making.

2.1 How is a Big Data Analytics Pathway Feasible?

The traditional application of punitive damages often relies on manual judgment, which is susceptible to subjective influences, leading to low judicial efficiency and inconsistent standards. The introduction of big data technology can transform this process into an objective judgment based on facts and data, mitigating the effects of human intervention and information asymmetry, thereby enhancing the transparency and fairness of adjudication.

The theoretical feasibility of a big data pathway is evident. First, with the ongoing development of the internet, e-commerce, and consumer complaint platforms, the volume of data is growing exponentially. This provides judicial authorities with vast analytical resources. For example, consumer purchase records, product quality complaints, and merchant sales records can all serve as a basis for analyzing the behavior of professional anti-counterfeiting litigants. By processing and analyzing this data, judicial departments can swiftly identify potential "knowing purchase" behavior, thus accurately determining their entitlement to punitive damages.

Second, the recent development of technologies such as data scraping, machine learning, and natural language processing has enabled big data to not only store and display information but also to uncover latent patterns. In regulating professional

anti-counterfeiting litigants, big data can identify whether a particular product is frequently the subject of lawsuits by such litigants, or whether a specific consumer has engaged in unusually frequent repeat purchases within a short period.

2.2 How is a Big Data Analytics Pathway Implementable?

While big data analytics is theoretically feasible, its practical application in regulating professional anti-counterfeiting litigants requires addressing specific implementation challenges. The implementation pathway involves several key aspects:

First, Data Collection and Integration. The primary step in big data analytics is the collection and integration of data. Judicial and regulatory authorities need to integrate data from various sources, such as e-commerce platform sales data, consumer purchase records, and merchant complaint logs. Furthermore, publicly available information on food safety and drug quality needs to be linked with commercial data. Establishing a data-sharing platform can ensure the timely and accurate flow of data into the judicial system, forming the basis for analyzing the behavior of professional anti-counterfeiting litigants.

Second, Construction of Data Analysis Models. Based on the collected data, it is necessary to construct scientific data analysis models for a comprehensive analysis of the behavior of professional anti-counterfeiting litigants. In this process, grounded in statistics, machine learning algorithms, clustering analysis, and other methods can be employed to classify and predict large datasets, automatically identifying behavioral characteristics. For example, analysis can focus on whether purchases involve repeatedly buying the same product in large quantities, whether the volume falls within a normal consumption range, or whether there are indicators of malicious litigation.

Third, Development and Application of Intelligent Support Systems. Building on big data analytics, developing intelligent support systems can provide judicial authorities with real-time decision-making recommendations. These systems can automatically analyze the behavior of professional anti-counterfeiting litigants during case processing and algorithmically determine the applicability of punitive damages. By integrating historical data, case information, and real-time analysis results, decision support systems can offer judges more precise bases for judgment, reducing bias and improving judicial efficiency.

Fourth, Cross-Sectoral Collaboration and Improvement of the Legal Framework. Implementing big data analytics requires collaboration among multiple departments, including the judiciary, market regulatory authorities, and consumer protection organizations. For instance, e-commerce platforms can provide transaction data to judicial authorities, and market regulators can provide consumer complaint records. Additionally, the existing legal framework may need adjustments to better accommodate the demands of the big data era and provide legal support for data usage.

This paper advocates constructing a "limited recognition" compromise based on quantitative assessment. This means supporting the application of punitive damages under the CPL and Food Safety Law for a portion of the purchases made by professional anti-counterfeiting litigants, while handling the remainder under the Contract Part of the Civil Code, which would only support returns, refunds, or compensation for actual losses. This approach offers two advantages: First, aligning

with the "negative view," it prevents abuse of rights and excessive profiteering by professional anti-counterfeiting litigants. Second, consistent with the "affirmative view," it leverages the power of private rights to a certain extent to combat counterfeiting and substandard production, supplementing the efforts of public authorities.

2.3 How to Distinguish and Determine the Purchase Quantity of Professional Anti-counterfeiting Litigants

Reasonable Review Criteria for the Quantity of Subject Matter:

Determination of a Reasonable Magnitude: Based on the nature of the goods, personal consumption habits, and generally accepted social norms, assess whether the single purchase quantity aligns with normal living needs. For example, for ordinary food items, a single purchase of up to 10 units might be considered reasonable, with quantities exceeding this threshold potentially considered profit-motivated stockpiling.

Differential Legal Application: Through quantitative methods grounded in statistics, the portion deemed within a reasonable magnitude would be subject to punitive damages under Article 55 of the CPL or Article 148 of the Food Safety Law. The portion exceeding the reasonable range would be handled under the Contract Part of the Civil Code, only supporting returns, refunds, or compensation for actual losses. The details are as follows:

2.3.1 Scenario: A Single Large-Volume Purchase by a Professional Anti-counterfeiting Litigant

Suppose a professional anti-counterfeiting litigant makes a single purchase of 10 units of a product. Over a past period, the average quantity per order for that same product from the merchant is 8.5 units. In this situation, relying on conventional judicial discretion makes it difficult to clearly determine if 10 units is significantly different from 8.5 units (rounded to 9). Given that the historical sales data might even include purchases exceeding 10 units, directly using 9 units as the base for punitive damages might be unfair to the litigant. Here, the statistical "one-sample t-test" can be employed to test whether there is a significant difference between the litigant's purchase quantity of 10 units and the merchant's average sales quantity for the same product. If a significant difference exists, then 9 units (or a quantity approaching the historical mean) could be considered the base for punitive damages, with the remaining 1 unit handled under the Contract Part of the Civil Code.

2.3.2 Scenario: Multiple Large-Volume Purchases by a Professional Anti-counterfeiting Litigant

Assume a professional anti-counterfeiting litigant makes several purchases, with an average quantity of 10 units. Over the past period, the merchant's average quantity per order for the same product remains 8.5 units. In this case, the traditional experience-based approach also fails. The "independent samples t-test" can be applied. The statistical meaning in this scenario is to test whether there is a significant difference between the continuous data set of the litigant's multiple purchase quantities and the continuous data set of the merchant's sales quantities for the same product. If a significant difference exists, 9 units could be considered the base for punitive damages, with the remainder handled under the Contract Part of the Civil Code. Conversely, if no significant difference is found, then the average of the litigant's purchases (10 units) could be considered the base for punitive damages, with the remainder handled under the Contract Part of the Civil Code.

If one does not adopt this computational jurisprudence pathway using statistical methods (like the t-test) and instead relies directly on the traditional heuristic judicial estimation, simply comparing means, the following limitations arise: First, lack of statistical significance testing: Directly comparing means only provides the relationship between the two group means but cannot determine if the difference is statistically significant. This can lead to erroneous conclusions, especially with small sample sizes or non-normally distributed data. Second, low requirements for data distribution and variance: Directly comparing means does not account for data normality or homogeneity of variance, potentially rendering results inaccurate and unreliable. When data does not meet these assumptions, direct comparison of means can be misleading.

2.4 Hypothetical Case Studies for the Big Data Analytics Pathway

2.4.1 Scenario: A Single Large-Volume Purchase by a Professional Anti-counterfeiting Litigant

Consider a professional anti-counterfeiting litigant engaging in a single concentrated purchase (see Table 1). Suppose the total purchase quantity is 10 units, while the merchant's historical average quantity per order for this product is 8.5 units (rounded to approximately 9). In this scenario, the traditional "conventional judicial discretion" faces a dual dilemma: First, the numerical difference between 10 and 9 units is perceptually minimal, making it difficult to determine if this constitutes an "abnormally large purchase" intuitively. Second, the merchant's historical sales data might contain naturally occurring single orders exceeding 10 units. Directly using 9 units as the base for punitive damages could unjustly diminish the legal rights of ordinary consumers. To overcome these limitations of experiential judgment, introducing the one-sample t-test is recommended. This method is suitable for testing the significance of the difference between a single sample mean and a known population mean. The specific operational steps are as follows: Treat the merchant's historical sales data as the population dataset, and the disputed purchase quantity (10) as the sample value. Calculate the t-statistic and compare it against the significance level (typically $\alpha = 0.05$) to determine if a statistically significant difference exists. If the test result is significant ($p < 0.05$), it can be inferred that the purchase behavior exceeds the normal consumption range. In that case, the quantity approximating the historical mean (9 units) could be deemed subject to punitive damages, with the remaining 1 unit treated as an ordinary contract transaction governed by the Contract Part of the Civil Code of the Civil Code. If the difference is not statistically significant, it suggests the purchase volume falls within a reasonable consumption range and should be fully subject to the relevant provisions of the Contract Part of the Civil Code.

Table 1: Scenario of a Single Concentrated Purchase Strategy

ID	Identity	Quantity	Mean	Total
A1	Professional Anti-counterfeiting Litigant	18	18	18
B1	Ordinary Consumer	7	8.5	68

B2	Ordinary Consumer	8		
B3	Ordinary Consumer	5		
B4	Ordinary Consumer	6		
B5	Ordinary Consumer	5		
B6	Ordinary Consumer	8		
B7	Ordinary Consumer	9		
B8	Ordinary Consumer	20		

2.4.2 Scenario: Staggered Large-Volume Purchases by a Professional Anti-counterfeiting Litigant

When a professional anti-counterfeiting litigant adopts a continuous purchasing strategy, ^[7] the limitations of the "conventional judicial discretion" become even more pronounced. The total quantity purchased through multiple transactions may be substantial and constitutes an independent set of continuous data. Simply comparing historical averages cannot accurately identify the abnormality of this systematic purchasing behavior. Furthermore, two situations can make it difficult for traditional "empiricism" to determine the reasonable quantity:

Scenario A: The average of the litigant's multiple purchases is very close to the historical consumer data average (see Table 2). Suppose the litigant's average purchase quantity over multiple transactions is 10 units, while the historical consumer data average is 8.5 units (rounded to approximately 9). Because the two figures are too close, applying the "conventional judicial discretion" makes it difficult to choose which figure should serve as the base for punitive damages. For such scenarios, the independent samples t-test is applicable. This method tests for significant differences between the means of two independent continuous variables. The specific implementation path involves forming the litigant's multiple purchase data into sample group A and the merchant's historical sales data into sample group B. Combining Levene's test for homogeneity of variances with the t-test can determine if a significant difference exists between the means of the two groups. If the test result is significant ($p < 0.05$), indicating that the litigant's purchasing behavior constitutes a systemic anomaly, the historical average (9 units) could be used as the base for punitive damages, with the remainder handled under the Contract Part of the Civil Code of the Civil Code. If no significant difference is found, the average purchase quantity (10 units) of the litigant could be considered as falling within normal consumption characteristics and thus subject to punitive damages, with the remainder

^[7] This type of anti-counterfeiting strategy is arguably the most common. See [original citation missing].

handled under contract law.

Table 2: Scenario of Minimal Mean Difference Under a Multiple Purchase Strategy

ID	Identity	Quantity	Mean	Total
A1	Professional Anti-counterfeiting Litigant	8	10	40
A2	Professional Anti-counterfeiting Litigant	12	8.5	68
A3	Professional Anti-counterfeiting Litigant	8		
A4	Professional Anti-counterfeiting Litigant	12		
B1	Ordinary Consumer	2		
B2	Ordinary Consumer	2		
B3	Ordinary Consumer	2		
B4	Ordinary Consumer	2		
B5	Ordinary Consumer	5		
B6	Ordinary Consumer	15		
B7	Ordinary Consumer	20		
B8	Ordinary Consumer	20		

Scenario B: The average of the litigant's multiple purchases differs significantly from the historical consumer data average. Suppose the litigant's average purchase quantity over multiple transactions is 14 units, while the historical consumer data average is 7 units. Since there is a perceived twofold difference, following the general "conventional judicial discretion," one might directly choose the historical consumer

data average of 7 as the benchmark for punitive damages. However, upon repeating the independent samples t-test described above, suppose the p-value for the significance of the difference between the two samples is 0.154, indicating that the statistical result is not significant. This means there is no significant difference between the average quantities purchased by the professional anti-counterfeiting litigant and ordinary consumers in this scenario. Therefore, the litigant's historical average of 14 units should serve as the base for calculating punitive damages, with the remainder (e.g., 43 units in a hypothetical total of 57) handled under the Contract Part of the Civil Code of the Civil Code.

3. Conclusion

This paper focuses on the application of punitive damages to professional anti-counterfeiting litigants. Considering existing academic controversies and judicial practices, it proposes a possible pathway based on big data analytics. By introducing statistical testing methods, such as the one-sample t-test and the independent samples t-test, for quantitative analysis of the purchasing behavior of professional anti-counterfeiting litigants, this approach achieves a scientific differentiation between reasonable consumption and malicious litigation. It effectively reconciles the "affirmative view's" emphasis on consumer protection and market regulation with the "negative view's" concerns about legal abuse, thereby achieving greater precision and operability in legal application.

With the assistance of big data analytics, judicial authorities can assess, on an objective and quantitative basis, whether the conduct of professional anti-counterfeiting litigants meets the conditions for applying punitive damages. This not only prevents abuse of rights but also enhances adjudicative efficiency and fairness. Furthermore, the "limited recognition" compromise proposed in this study offers a feasible operational pathway for handling cases involving professional anti-counterfeiting litigants in practice—applying punitive damages to purchases of a reasonable magnitude and handling the excess under contract law. This provides a new reference for determining the legal status of professional anti-counterfeiting litigants and offers a data-driven theoretical basis for improving China's legal system for consumer protection.