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Chinese Professional Consumers at 30: The Rise and Impending Fall

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Abstract

This paper introduces a unique phenomenon with a distinctive Chinese regulatory approach. Since 1994, the Consumer Rights Protection Law has afforded consumers the right to seek punitive damages in instances of fraudulent practices. This has given rise to a special profession with Chinese characteristics: *professional consumers*. Their status as enigmatic figures is a consequence of the fluctuating stance of public authorities. Thirty years of consistent inconsistency has been a rarity in China's legislative history. The year 2024 marks the 30th anniversary of the enactment of the CRPL, China's Consumer Rights Protection Law and the birth of its implementing regulation. It is an opportune moment to reassess the regulatory system that enabled this group and reconstruct it for the future. This paper presents a comprehensive regulatory review of the emergence, growth, and projected decline of professional consumers. It examines the reasons for this long-standing regulatory inconsistency through a detailed investigation of China's legal system. It concludes by projecting two upcoming legal positions. The first is the transformation under the state's *co-governance* strategy. The second is the displacement by procuratorial public interest litigation. Although seemingly contradictory, these two positions exemplify a distinctive Chinese approach to the *co-governance* strategy, which is characterized by the preponderance of public authority.

Keywords: consumer protection; professional consumers; punitive damages; departmentalization; co-governance

I. Introduction

While business is profit-driven, so are some consumers. Faced with a reward-giving whistleblower system that does not provide sufficient economic incentives, it is perhaps not surprising that some would take matters into their own hands. Article 55(1) of China's Consumer Rights Protection Law (CRPL)¹ provides consumers with the right to claim punitive damages when business operators engage in fraudulent practices. The compensation amount can be increased to three times the cost of the goods or services. The Food Safety Law (FSL)² and the Drug Administration Law (DAL)³ even increase the

¹ Consumers' Rights Protection Law (1994), Standing Committee of the National People's Congress, promulgated on 1 January 1994, amended on 25 October 2013 (CRPL 1994).

² Food Safety Law of the People's Republic of China, Standing Committee of National People's Congress, first promulgated on 28 February 2009, amended on 29 April 2021 (FSL).

³ Drug Administration Law of the People's Republic of China, Standing Committee of National People's Congress, first promulgated on 20 September 1984, revised on 26 August 2019 (DAL).

compensation amount to ten times of the food and drug products. These laws gave rise to “professional consumers,”⁴ a cryptic faction of consumers operating in China’s consumer market, who have been adeptly tracking down sellers’ malfeasance and infringements for monetary gains. One of the most contentious issues in the theoretical and practical realms of Chinese consumer law is the question of whether the claims of professional consumers will be upheld. Nevertheless, regulatory documents and practices have been inconsistent for 30 years on this issue. Given the paucity of research in English literature concerning Chinese consumer law on this topic, this paper seeks to address this gap by introducing a unique phenomenon with China’s distinctive regulatory approach.

Professional consumers possess considerable bargaining power and resources with which to detect sellers’ violations and request compensation. It is important to recognize the significance of private enforcement of public objectives, as they help to offset the deficiency of resources in a traditional command-and-control system. Conversely, this group of consumers may have a detrimental impact on the legal system in various ways. Such actions result in the inefficient use of administrative and judicial resources, contribute to an unstable business environment, and divert social resources that could otherwise be utilized by ordinary consumers.⁵ China’s legal system has been grappling with the question of whether to prioritize consumer protection or fair market order for three decades, during which time it has vacillated between different regulatory approaches. This erratic regulatory history is without precedent in the contemporary Chinese legal tradition. The lack of clarity surrounding the legal status of professional consumers has led to an increase in secrecy and a rise in regulatory challenges.

A major breakthrough came on 15 March 2024, World Consumer Rights Day and CRPL’s 30th anniversary. The CRPL Implementation Regulation⁶ was issued and is set to take effect on 1 July 2024. It introduces the concept of *consumer protection co-governance*,⁷ which combines law-abiding operators, industry self-regulation, consumer participation, government regulation, and social supervision. This is the first time in the past three decades that the central government has recognized the active role of consumers in ensuring consumer protection. The statement aligns with the political objective of the Communist Party of China (CPC) to establish a national governance system based on *Co-construction, Co-governance, and Co-sharing*.⁸ This article posits that the formalization of this strategy represents a pivotal moment in the history of consumer protection regulation in China and will influence the trajectory of professional consumer regulation in the country.

In light of the aforementioned background, this paper offers a comprehensive review of China’s legal system with regard to the fluctuating regulatory landscape pertaining to professional consumers. It aims to determine if the 2024 breakthrough will halt the fluctuating trend and predict future developments. This paper is structured as follows: Part 2 provides an overview of the regulatory background, profitable methods, and current status of professional consumers. Part 3 examines the historical development of China’s

⁴ Professional consumers in China are referred to by various other titles, including “professional anti-counterfeiters” and “professional compensation seekers.” Each title emerged during a specific historical period with different inclinations. For instance, the former was used more positively in the past, while the latter has recently been assigned a more critical tone. To maintain a neutral standpoint, the present paper opts for the title of “professional consumer.”

⁵ The Paper, Disputed Professional Consumers (10 June 2022), <https://m.thepaper.cn/newsDetail_forward_18497074> (last accessed 22 March 2024).

⁶ CRPL Implementation Regulation, issued on 15 March 2024, enacted on 1 July 2024.

⁷ Art 3, CRPL Implementation Regulation.

⁸ Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Upholding and Improving the System of Socialism with Chinese Characteristics and Promoting the Modernization of the National Governance System and Governance Capacity, 31 October, 2019.

legal framework for managing professional consumers. Part 4 analyzes contested norms that affect the ambiguity of laws and regulations from both consumer and seller perspectives. Part 5 explores regulatory inconsistencies from a systematic perspective, investigating the interaction among the legislature, administration, and judiciary. Part 6 offers insights into the potential future trajectories of this distinctive cohort of consumers and elucidates the legal foundations underlying these projections.

II. Overview of professional consumers in China

The implementation of a punitive damages system by CRPL has led to the emergence of a new class of consumers, known as “professional consumers.” The concept of professional consumers can be traced back to Mr. Wang Hai,⁹ who discovered that he could profit as an individual consumer by seeking compensation for or reporting counterfeit or substandard products as early as 1994. He has not only amassed a considerable fortune¹⁰ through the tracking of counterfeit products but has also actively advised consumers of counterfeit products to pursue compensation.¹¹ He has successfully established himself as a professional consumer advocate, attracting a significant number of individuals to the profession. This section presents an overview of the regulatory context, profitable strategies, and current status of this distinctive group of consumers in China.

I. The regulatory framework for professional consumers

The CRPL 1994 initially imposes punitive damages of one time the original price on manufacturers and providers (referred to interchangeably as sellers) of counterfeit or substandard products.¹² Following China’s accession to the World Trade Organization (WTO) in 2002, a comprehensive legal reform initiative was initiated to align the country’s legal framework with the WTO’s standards.¹³ Regulatory agencies intensified their enforcement of existing laws and regulations, including the promulgation of the FSL, the revision of the CRPL (CRPL 2013), and the revision of the DAL. The compensation for consumer products other than food and drugs may be up to three times the original product price, with a minimum of RMB 500.¹⁴ In contrast, the standard for food and pharmaceuticals can be up to ten times the original product price, with a minimum of RMB 1,000.¹⁵ Furthermore, sellers of substandard or fake products and services may face both administrative and criminal penalties. As a consequence, sellers are now more alert to potential claims from customers, which in turn provides professional consumers with

⁹ For more information about Wang Hai’s 30-year anti-counterfeit activities, see Southern Weekly, “Wang Hai: Disputed Fighting with Counterfeit for 30 Years” <<https://new.qq.com/rain/a/20231230A0005B00>> (last accessed 17 July 2024).

¹⁰ Xinhua net, “Professional Anti-counterfeiter Wang Hai: He Spent a Lot of Money Buying Fakes and Earned 4 Million in One Year” <http://www.xinhuanet.com/politics/2015-03/23/c_127608513.htm> (last accessed 18 July 2024).

¹¹ The paper, “Yu Minhong’s Dongfang Selection was Once Again Targeted by Wang Hai” <https://m.thepaper.cn/newsDetail_forward_26413103> (last accessed 18 July 2024).

¹² Art 49 of CRPL 1994 reads: “A business operator that practices fraud in providing a commodity or a service must, at the request of the consumer, increase the compensation for losses incurred by such consumer. The amount of the increase in compensation shall be the price of the commodity purchased or the fee for the service received by the consumer.”

¹³ Yang Jingyu, NPC, “Joining the WTO and Establishing China’s Legal System” (30 January 2002) <http://www.npc.gov.cn/npc/c12434/c541/201905/t20190524_8612.html> (last accessed 18 July 2024).

¹⁴ Art 55, CRPL 2013.

¹⁵ Art 148, FSL; Art 144, DAL.

greater leverage when seeking compensation. Appendix I outlines the legal liabilities that sellers may face under civil, administrative, and criminal laws.

2. Three methods for seeking compensation by professional consumers

Chart 1 illustrates three potential avenues for professional consumers to profit. Firstly, they can report illegal activities to relevant authorities, as indicated by the black lines (Method 1). A successful whistleblowing may result in a reward of up to RMB 1,000,00¹⁶ to the whistleblower and administrative penalties up to suspension of business operation.¹⁷ Secondly, as illustrated by the blue line (Method 2), professional consumers may request statutory compensation directly from the seller. In practice, they frequently propose an amount that is equal to, or higher than, the legally required compensation; however, it is typically less than the sum including the statutory compensation and potential administrative fine if the matter is brought to the attention of government agencies. The settlement agreement typically includes a confidentiality provision regarding both the fraudulent products and the identity of the compensated consumer. Third, in the event that the seller refuses to settle, professional consumers have three potential avenues for recourse: Method 3.1 suggests that consumers can pursue legal action directly against the seller. Method 3.2 outlines the possibility of reporting the violation to the relevant regulatory body, which can then be utilized as evidence in a lawsuit against the seller.¹⁸ Method 3.3 outlines the possibility of obtaining redress through public interest litigation. This can be initiated by the Procuratorate, which is responsible for prosecuting violations related to food and drugs,¹⁹ or civil public interest litigation, initiated by consumer associations on behalf of consumers in general.²⁰

3. Status quo of professional consumers

In order to prevent industry-wide boycotts, professionals often adopt the guise of ordinary consumers. The lack of transparency surrounding this group makes it challenging to conduct precise statistical studies on them. Although there is a paucity of publicly available data on the actual numbers or regional distribution of professional consumers, some information about this population can be gleaned from a few autobiographies,²¹ interviews,²² and media coverage.²³ It is estimated that there are several hundred

¹⁶ Art 13, Interim Measures for Rewarding Whistleblowing against Major Illegality in the Market Regulation Field, promulgated on 1 December 2021.

¹⁷ Art 56, CRPL 2013.

¹⁸ In this instance, decisions made by administrative agencies increase the likelihood of professional consumers receiving a favorable court award. See Legal Daily, “Some places do not take professional consumers’ complaints” (13 July 2024) <<https://news.cctv.com/2023/09/23/ARTIELFCbo1MY72b16Cktz7T230923.shtml>> (last accessed 28 September 2023).

¹⁹ Art 13, Interpretations of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases (2020 Revision), effective on 1 January 2021.

²⁰ Art 1, Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Consumer Public Interest Civil Litigation Cases (2020 Revision), effective on 1 January 2021.

²¹ See, e.g. Taihangshan, *The Northern Wolves: Unveiling China’s Professional Counterfeit Society* (Beijing, Intellectual Property Publisher, 2014).

²² Z Ren, “He Shan: Return Me A Good Order, An Interview Record of CRPL-related Issues” (1998) 3 Chinese Lawyer, 35.

²³ See, e.g. China Food Newspaper, “Re-recognition of Professional Consumers: Positioning, Policy Guidance and Behavior Regulation” (25 August 2022) <<https://www.cnfood.cn/article?id=1573169953410088962>> (last accessed 28 March 2024).

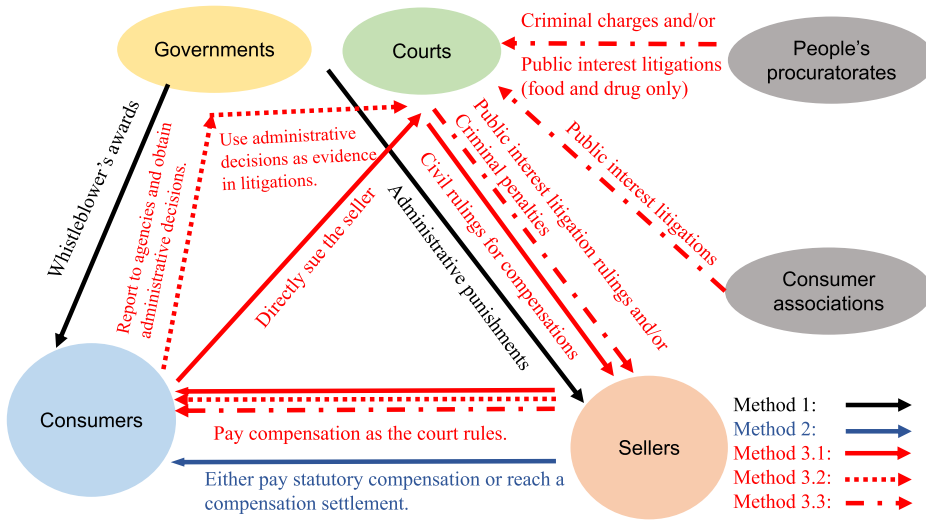


Chart 1. Three methods of requesting compensation by professional consumers.

thousand individuals²⁴ who engage in this behaviour. Additionally, this group displays the following characteristics.

1. Professional consumers tend to seek high-value products that are subject to stringent regulations, and they pursue infringements that are relatively easy to identify. For instance, a substantial proportion, 90% of court cases concerning food violations are related to labeling.²⁵ The remaining cases pertain to shelf life, illegal additions of food ingredients, and incorrect production licences.
2. Professional consumers are more likely to engage with larger companies, which are better positioned to resolve disputes through considerations such as reputation and stock market compliance. Furthermore, the success rate of requesting compensation in one branch of a specific company can inform professional consumers about the likelihood of success in other branches of the same company.
3. Professional consumers tend to group up rather than independently seeking compensation as they did in the 1990s. For instance, four prominent family groups have emerged in Chongqing city, and the annual revenue of the most successful family group was more than RMB 2 million,²⁶ despite the unknown amounts from settlements.
4. In the twenty-first century, professional consumers have increasingly resorted to Methods 3.1, and 3.2, with a notable decline in the use of Method 1 observed in the 1990s. Unfortunately, this communication can take various forms, including illegal methods such as extortion. These developments have resulted in a shift in social

²⁴ *ibid.*

²⁵ D Ding & C Chen, "Combating Counterfeiting in the Food Profession from the Perspective of the Judiciary System" (2016) 31(5) *Journal of Shanghai University of Political Science and Law*, 118, 119–20.

²⁶ The top four family groups have been awarded RMB 2,736,408, RMB 830,875, RMB 607,174, and RMB 418,174 solely in Chongqing. See China Market Supervision Newspaper, "A Comprehensive Analysis of Professional Consumers' Features and Trend" (18 May 2022) <https://finance.sina.com.cn/chanjing/cyxw/2022-05-18/doc-icwist8114918.shtml?cre=tianyi&mod=pcpager_news&loc=15&r=0&rfunc=13&tj=cxvertical_pc_pager_news&tr=340&wm=> (last accessed 17 March 2024).

attitudes, from viewing these individuals as “counterfeit heroes”²⁷ in the 1990s to later labeling them as “unruly individuals.”²⁸ Appendix II provides a summary of the disparate perspectives expressed by media outlets over the past three decades.

III. The 30-year swinging regulatory changes on professional consumers

Over the past three decades, there has been a lack of consistency in the regulatory environment for professional consumers. Initially, the influence of Wang Hai led to the endorsement of professional consumers. However, in response to the growing engagement of professional consumers in illicit compensation-seeking activities, public authorities introduced a multitude of guidance documents, resulting in ongoing adjustments and conflicts within the legal system.

The author summarized and evaluated representative legal documents, judicial decisions, and media coverage from the past 30 years, as listed in Appendices II through IV. The materials selected were chosen based on the following criteria. The legal documents included were national laws and regulations, as well as judicial interpretations and pioneering local regulations in major cities. The judicial decisions were those judged, cited, or listed as guiding cases by the Supreme People’s Court (SPC). Finally, the media coverage was selected from nationally official media outlets, as these could reflect the public authorities’ attitude.

The author distinguishes between three categories of the practical impact of their work on professional consumers. The term “positive” is employed to describe a more tolerant attitude towards professional consumers. The “neutral” category of media coverage refers to objective reports that reflect public attention to this group of consumers. It should be noted that these selections are not exhaustive, but they are illustrative of the rough historical evolution of regulatory attitudes towards professional consumers.

The author employs a numbering system (1, 0, -1) to categorize items as either positive, neutral or negative. When there is a dearth of notable activity on the part of governmental authorities or the absence of influential legal documents and judicial decisions, the author also assigns a value of 0 to these periods. The aforementioned system is then employed to generate Chart 2, which illustrates the evolution of legal and social attitudes over the past three decades. A pattern emerges whereby there has been a period of endorsement (1994–1997), prohibition (1997–2007), re-endorsement (2007–2016), and re-prohibition (2016–2024),²⁹ followed by a period of mixed endorsement and prohibition (2024–). Despite the existence of specific inconsistencies, this general trend has persisted. This section presents a detailed analysis of the significant modifications to legal documents and adjudication, as well as the regulatory changes that have taken place during COVID-19.

I. Changes in attitudes in legal documents

A review of regulatory attitudes towards professional consumers over the past three decades reveals a fluctuating pattern of approval and prohibition. Appendix III presents a synopsis of the changes observed in national and local legal documents.

²⁷ Guangzhou Daily, “China’s first professional counterfeiting Wang Hai: earned tens of millions” <<https://m.huanqiu.com/article/9CaKrnJJ6sZ>> (last accessed 17 July 2024).

²⁸ China News, “Wang Hai: The First Professional Counterfeiter in China” (20 October 2008) <<https://www.chinanews.com.cn/sh/news/2008/10-20/1418579.shtml>> (last accessed 17 July 2024).

²⁹ See FH Ying, “Prohibition or Restriction? – Research on the Regulation of Knowing and Buying Fake Behavior” (2019) 4 Law Review, 63, 64.

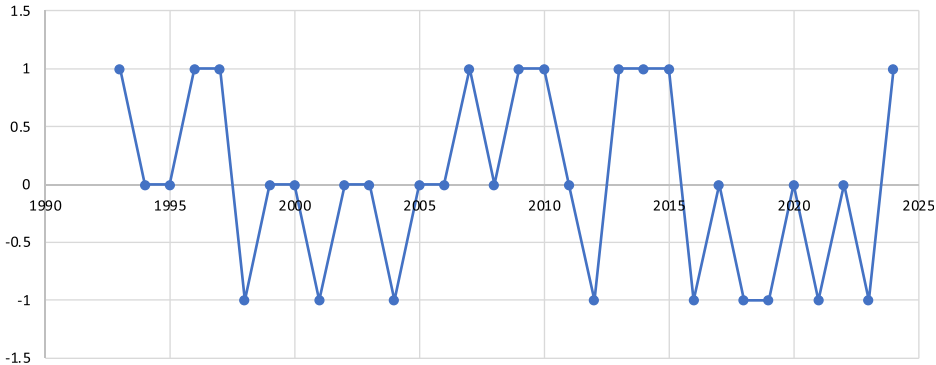


Chart 2. The Evolution of Legal and Social Attitudes Towards Professional Consumers.

Note: This chart was created using Appendices II through IV. -1 indicate a more critical attitude, while 1 indicate a more approving attitude.

a. Towards more sophisticated standards in national legal documents

The CRPL is silent on the legislature's attitude toward professional consumers. Nevertheless, two primary legal documents from the judiciary and the administration provide guidance on how to regulate professional consumers, leading to further ambiguity. First, a 2013 SPC judicial interpretation³⁰ clarifies the ambiguous legal status of professional consumers in the food and drug industries and confirms their legal protection. The SPC emphasizes the crucial significance of ensuring food and drug safety for human health. However, it is unclear whether legal protection should be extended to professional consumers in non-food and non-drug industries. Second, the 2016 Draft CRPL Implementation Measures excludes protection for consumers *seeking profit* (营利).³¹ This draft proposes to exclude professional consumers, even if their profit-seeking activities are legitimate. Although this draft has never been enacted, it is often cited by authorities to indicate the State Council's disapproval of professional consumers.

The recently promulgated CRPL Implementation Regulation attempts to clarify the regulatory stance on the matter. It explicitly prohibits activities *that seek illegal benefits* (牟取不正当利益) and infringe on the legitimate rights and interests of operators.³² In contrast to the term *profit-seeking* (营利),³³ which covers all activities undertaken with the aim of making a profit, the term *seeking illegal benefits* (牟取不正当利益) refers only to illicit activities aimed at making an illicit gain. The new provision sets a higher standard of scrutiny for professional consumer behavior and represents the State Council's first recognition of the positive role of professional consumers in legal form. Their legal activities in seeking redress fall under the category of *consumer participation and social supervision* in a consumer rights protection co-governance system as promoted in Article 3. Although it is still too early to assess the practical impact of this regulation, it is expected that this more sophisticated set of criteria will serve to minimize inconsistencies and resolve many of the confusions that have arisen in the past.

³⁰ Art. 3, Provisions of the Supreme People's Court on Certain Issues Concerning the Application of Laws in Hearing Cases Involving Disputes over Foods/Drugs, Fa Shi (2013) 28, revised on 1 December 2021.

³¹ Art 2, Implementation Measures of CRPL (draft for review), issued on 5 August 2016.

³² Art 27, CRPL Implementation Regulation.

³³ Procuratorate Daily, "Purpose of profit' is the key factor in criminalizing illegal trading of foreign exchange" (09 July 2019) <https://www.spp.gov.cn/llyj/201907/t20190709_424439.shtml> (last accessed 17 March 2024).

b. Inconsistencies and contradictions in national “soft law” documents

Compared to the legally binding documents mentioned above, a number of lower-level administrative and judicial communications illustrate a more complex and unpredictable trend.

When reviewing numerous such non-legally binding soft law documents,³⁴ it is not uncommon to find contradictory or self-contradictory positions adopted by the same institution. For example, the State Council urged the strengthening of punitive damages and the curbing of infringements³⁵ in 2015. In 2019, however, it ordered the suppression of extortion under the guise of “combating counterfeit goods.”³⁶ Nevertheless, in a 2022 response on its website, the State Administration for Market Regulation (SAMR) mentions that the law does not differentiate between professional and ordinary consumers.³⁷ The 2015 and 2022 opinions indicate the administration’s permissive attitude, while the 2019 opinion indicates a prohibitive attitude.

The SPC has also adopted a changing stance. For example, in 2001, the Vice-President of the SPC stated that professional consumers were not protected by the CRPL.³⁸ However, in 2013, the SPC explicitly granted protection to professional consumers in the food and drug sector.³⁹ In 2014, the SPC showed a generally positive attitude by stating that the definition of consumer under the CRPL is broad,⁴⁰ while in a 2017 response it decided to finally restrict *profiteering* (牟利) activities of professional consumers, except those in the food and drug sector.⁴¹ *Profiteering* (牟利), illegal activities for profit, has a narrower scope than *profit-seeking* (营利) in the 2016 Draft Implementation Measures, but a broader scope than *seeking illegal benefits* (牟取不正当利益) in the 2024 Implementation Regulation. This chaos continued until 2021, when the SPC Research Institute of Judicial Cases issued a summary of its adjudication rules.⁴² Although not legally binding, the SPC Research Institute’s case summaries serve as a basis for future SPC guidance and provide insight into the future direction of SPC guidance that will be legally binding on local courts.⁴³

³⁴ See generally, F Snyder, “Soft Law and Institutional Practice in the European Community”, In S Martin (ed), *The Construction of Europe* (Dordrecht, Springer 1994); L Senden, *Soft Law in European Community Law: Its Relationship to Legislation* (London, Hart 2004).

³⁵ Art 4 (8), Guiding Opinions of the State Council on Actively Playing the Leading Role of New Consumption and Accelerating the Formation of New Supply and New Power, Guo Fa [2015] No. 66, promulgated on 23 November 2015.

³⁶ Art 5 (1), Guiding Opinions of the General Office of the State Council on Promoting the Standardized and Healthy Development of the Platform Economy, Guo Ban Fa [2019] No. 38, promulgated on 8 August 2019.

³⁷ The paper, “What should I do if a professional anti-counterfeiter knows that he is buying a fake product? State Administration of Market Supervision: Claims for defective products are handled according to complaints” <https://www.thepaper.cn/newsDetail_forward_20691103> (last accessed 23 March 2024).

³⁸ DH Tang, “Attach great importance to the protection of civil rights and interests—Speech at the training course for the president of the Intermediate Court of the National Judges College” (2001) (2) Civil Trial Guidance and Reference, 1, 1.

³⁹ Provisions of the SPC, *supra* note 30.

⁴⁰ China Consumers Newspaper, “The Supreme People’s Court responded to this newspaper: Those who know about fakes and buy them are also consumers” (12 February 2014) <http://js315ccn.com/html/news/detail_2014_02/17/32876.shtml> (last accessed on 12 November 2013).

⁴¹ Reply Opinions of the General Office of the Supreme People’s Court to Recommendation No. 5990 of the Fifth Session of the Twelfth National People’s Congress” (Legal Letter [2017] No. 181).

⁴² SPC Summary of adjudication rules for determining the nature of “knowingly buying fakes”, 14 December 2021.

⁴³ The author interviewed a senior researcher at the SPC Research Institute of Judicial Cases regarding the legal nature of case summaries in May 2014.

c. Impact of legal inconsistencies on local practices

Unfortunately, instead of clarifying the legal position of professional consumers, the above-mentioned legal adjustments only serve to provide guidance to professional consumers in reshaping their business model. For example, the 2013 judicial interpretation, which is legally binding,⁴⁴ has led to a surge of professional consumers in the food and drug market. The volume of consumer protection lawsuits increased almost eightfold between 2014 and 2017, mainly in food and drug cases. In 2017, these lawsuits accounted for 15.27% of all civil cases.⁴⁵

Meanwhile, both judges and professional consumers recognize the lack of legal binding force⁴⁶ of the 2017 response, so the language of “gradually restricting the profitable anti-counterfeiting behavior of professional counterfeiters”⁴⁷ has little deterrent effect.

On the other hand, the lack of clear guidance in national documents has led local authorities to develop their own regulations. Interestingly, local authorities are generally restrictive towards professional consumers. It is worth noting that local regulations still differ in detail, as shown in Appendix III. For example, the Shanghai government adopts a watch list for professional consumers based on a number of criteria,⁴⁸ while the Shenzhen legislature focuses only on the purchase amount.⁴⁹

2. Changes in attitudes in judicial practices

Local courts differ in their treatment of professional consumers. A search of the legal database using the keyword “knowingly purchasing fake or inferior products” yielded 10,280 court verdicts and 27 administrative decisions,⁵⁰ which may only reveal the involvement of professional consumers from both the judicial and administrative branches. Moreover, the courts differ in the compensation they award. 77.79%⁵¹ of the courts uphold the claim for compensation, of which 30%⁵² uphold the professional consumer’s claim and the rest tend to reject it. The rate of successful compensation also varies according to location. For example, 59.08% of compensation cases between 2017 and 2021 originated from Chongqing courts.⁵³ Appendix IV provides representative examples of court decisions based on the legal documents in force at the time.

3. Pandemic-induced changes in regulations

Covid-19 brought about significant changes in the regulatory system and affected the practices of professional users. The pandemic not only slowed down China’s economy, but also resulted in a significant shortage of qualified personnel in government agencies and prolonged legal proceedings. To address this challenge, various legal documents, as listed

⁴⁴ Art. 5, Provisions of the Supreme People’s Court on Judicial Interpretation, promulgated on April 1, 2007, revised on June 9, 2021.

⁴⁵ Yangcheng Daily, “What are the consumer rights protection lawsuits last year?” (14 March 2018) <https://news.youth.cn/jsxw/201803/t20180314_11504204.htm> (last accessed 18 July 2024).

⁴⁶ See, The Supreme Court’s Reply on Publicizing Various Judicial Documents, 17 March 2016.

⁴⁷ Reply Opinions, *supra* note 41.

⁴⁸ Art. 2(3), Guiding Opinions of the Shanghai Municipality on Effectively Responding to Occupational Claims and Occupational Whistleblowing Behaviors and Maintaining the Business Environment, 2018.

⁴⁹ Art. 97, Shenzhen Municipality Food Safety Supervision Regulation, 2018, amended in 2020.

⁵⁰ Up till 30 June 2024 in Kluwer database.

⁵¹ Tencent news, “Industrial administration semi-month salon, Data tells you! What is the trend for professional counterfeiters? How do experts say?” (18 May 2022) <<https://new.qq.com/rain/a/20220518A01EF800>> (last accessed 18 July 2024).

⁵² Legal Daily, “Unveiling the A & B Sides of Professional Consumers in Food Market” <http://www.news.cn/fortune/2021-09/09/c_1127842128.htm> (last accessed 11 November 2023).

⁵³ China Market Supervision Newspaper, *supra* n 26.

in Appendix V, have been introduced to promote economic growth by developing a more conducive business environment. These measures typically do not penalize companies for minor misconduct, which has the effect of reducing professional consumer activity. For example, Beijing does not punish first-time minor violations.⁵⁴ On the other hand, the pandemic has shifted the focus of enforcement to more serious issues such as food and drug safety. As a result, professional consumers have quickly adjusted their strategy to increase the likelihood of receiving compensation.

IV. Key issues leading to ambiguities in the regulatory system

In essence, the fluctuation in regulations is due to a number of unresolved value judgements. In principle, the CRPL grants more favorable protection to consumers vis-à-vis sellers.⁵⁵ However, the legal system is silent on two issues. First, does the skewed consumer protection extend to professional consumers? If the answer is yes, how can the protection of professional consumers be reconciled with the need to maintain market order? In other words, in order to maintain a fair market order, can sellers be exempted from punitive damages because professional consumers deliberately purchase substandard or counterfeit products? This section discusses controversial terms from the perspective of both consumers and sellers, representative cases of which can be found in Appendix IV.

I. Determinations on the consumer side

The core issue is whether professional consumers are consumers under the CRPL.⁵⁶ The CRPL defines consumers as individuals who purchase or use goods and services for *living consumption needs* (生活需要).⁵⁷

a. Different interpretations of living consumption needs (生活需要)

Some courts interpret living consumption needs narrowly as *daily needs*.⁵⁸ Therefore, the purchase of more than fifty bottles of wine⁵⁹ and forty-eight buckets of olive oil⁶⁰ would not be considered as living consumption needs. Some courts adopt a broader interpretation to include all consumption that is not for business purposes,⁶¹ such as wholesale purchases or resale of products.⁶² Concerning whether the compensation sought

⁵⁴ Arts 1 and 2, Beijing Municipal Administration for Market Regulation's Error Tolerance and Correction List for Minor Illegal Acts (Second Edition), effective August 22, 2023.

⁵⁵ XD Ding, "How does the law regulate unequal relationships?" (2022) 34 (2) Peking University Law Journal 445, 445.

⁵⁶ YY Wang, "On the Application Scope of CRPL," (2013) 2 Legal Application, 76, 77; MR Guo, "Are 'Fake Buyers with Prior Knowledge' Legally Protected? – On Application Scope of CRPL," (2015) 6 Contemporary Law Review 68, 71.

⁵⁷ Art 2, CRPL 2013.

⁵⁸ LM Wang, "On the Necessity of Legal Interpretation," (2014) 2 China Law Review 87, 88. See, Wang, *supra* n 56, 77.

⁵⁹ Retrial Judgment for Licang District Beautiful Supermarket, Han Fukun Product Dispute (2020), Lu Min Zai No 386.

⁶⁰ Retrial Judgment for Lining Vanguard Supermarket, Li Chuang Sales Contract Dispute (2019), Liao Min Zai No 101.

⁶¹ Wang, *supra*, n 58, 88.

⁶² *ibid.*

aligns with daily needs,⁶³ some courts interpreted this to include all transactions aimed at increasing the value of personal and family assets.⁶⁴ Conversely, some courts have rejected this view on the grounds that compensation-seeking is contrary to good faith.⁶⁵ Interestingly, the 2013 SPC interpretation attempted to avoid this debate by using the term *purchaser* rather than *consumer*.⁶⁶ Some scholars interpreted this as the SPC recognizing the CRPL's recognition of professional purchasers as *consumers*.⁶⁷

In the absence of clear guidance, an SPC judge suggests that courts should consider the specific characteristics of the purchasing behavior, such as a *reasonable quantity* of a purchase based on the purchaser's financial capacity and consumption habits.⁶⁸ For example, the purchase of 148 boxes of donkey skin gelatine would exceed the purchaser's normal level of consumption and therefore disqualify him as a consumer.⁶⁹ However, another judge believes that the criterion of *reasonable quantity* is arbitrary.⁷⁰ As a result, some courts try to avoid this issue by allocating the burden of proof. However, courts still differ in how they do this. Some require the consumer to prove his identity as a consumer⁷¹ or the non-conformity of the product,⁷² while others require the seller to prove the conformity of the product.⁷³

b. Different stances on knowingly purchasing counterfeits (知假买假)

An opposing view against professional consumers due to the nature of *knowingly purchasing counterfeits* (知假买假). Some scholars argue that the CRPL provides special safeguards for consumers who are disadvantaged by information asymmetries and vulnerability.⁷⁴ Some courts also consider it inappropriate to grant such protection to intentional purchasers who do not suffer from information disadvantage.⁷⁵ Moreover, the most common reason for courts to dismiss compensation claims is that the intentional purchase of counterfeit goods violates the principles of estoppel and good faith.⁷⁶

⁶³ LJ Shang, "Examination of Legal Effect of Knowingly Purchase of Fakes and Textual Interpretation," (2015) 1 East China University of Politics and Law Journal 81, 88.

⁶⁴ JM Wu, "Judicial Application of Punitive Compensation in Consumption Civil Disputes," (2017) 6 Legal Application 57, 58. See also, Retrial for Sales Contract between Xiao Fei and Shenzhen Weili Cultural Development Co. Ltd. (2018) Su Min Zai No. 191 (holding that despite the consumer's multiple compensation-seeking activities, FSL does not exclude compensation for professional consumers).

⁶⁵ Reply Opinion, supra n 41; Guo, supra n 56.

⁶⁶ Provisions of the SPC, supra n 30.

⁶⁷ Ding, supra n 25, 118.

⁶⁸ Wang, supra n 56, 78.

⁶⁹ Zhang Yunfeng v. Shenzhen Zhisen E-Commerce Co., Ltd. Online Shopping Contract Dispute Case, Beijing No 4 Intermediate People's Court (2019) Beijing 04 Min Zhong No 133. (The court requires the consumer to provide a reasonable explanation why his purchasing behavior is different from ordinary consumers.)

⁷⁰ Wang, supra n 56, 78.

⁷¹ Zhang, supra n 69. See also Chongqing 5th Intermediate Court Judgment on Zhang v. Wang Sales Contract Dispute, (2002) Yu 05 Min Zhong No 46 (the court reasons that the consumer constantly brings compensation lawsuits and is a professional consumer, who is not exempt of burden of proof for the "consumer" identity like an ordinary consumer.)

⁷² Sales Contract Dispute between Sun Yinshan and Nanjing Oushang Supermarket Co. Ltd. Jiangning Store, (2012) Jiang Ning Kai Min Chu Zi No 646.

⁷³ Appeal For Product Liability between Ma Mingshuang and Jilin East Commerce Zone Grain Dairy Store, (2002) Ji 02 Min Zhong No 228.

⁷⁴ Guo, supra n 56, 71.

⁷⁵ See e.g., Retrial Judgment for Huang Chunhua Sales Contract (2018) Yue Min Zai No 185 (holding that knowing fake and buying fake is to make profits out of others' illegal acts, which does not follow the principle of good faith and cannot preserve good market order). See also Retrial Judgment for Lining Vanguard Supermarket, Li Chuang Sales Contract Dispute (2019), Liao Min Zai No 101 (holding that knowing fake and buying fake violates the good faith principle).

⁷⁶ SPC Summary, supra n 42.

Recent SPC documents suggest that the SPC is attempting to adopt a more complex approach to dealing with *knowingly purchased counterfeits*. A 2023 draft interpretation explicitly grants consumer status to individuals who knowingly purchase counterfeit food and drugs. products.⁷⁷ In the 2024 Work Report, the SPC limits its endorsement to professional consumers by instructing courts to uphold claims for compensation only on the basis of a *reasonable quantity* purchased, rather than the actual amount purchased.⁷⁸

2. Determinations on the seller side

The CRPL imposes punitive damages for the seller's commission of *fraud* (欺诈)⁷⁹ without providing a clear definition, which has resulted in a lack of clarity regarding the applicability of punitive damages to professional consumers. An examination of the basis for punitive damages is a 1988 SPC judicial interpretation, which awards punitive damages based on the subjective misapprehension of the party concerned.⁸⁰ The current Civil Code defines fraud as the intentional provision of false information or concealment of true information, which causes the party concerned to act on the basis of a misapprehension.⁸¹ However, neither subjective misrepresentation⁸² nor causation⁸³ occurs in professional consumer scenarios. Therefore, some courts hold that the seller's conduct is not fraudulent and therefore punitive damages are not available. In contrast, other courts analyze that the CRPL has a dual nature⁸⁴ – both public law (as administrative law), which protects public interests, and private law (as civil law), which protects private interests. They focus on the public law nature of the CRPL and consider that, unlike private law fraud, public law fraud only requires the seller's unlawful conduct to be intentional.⁸⁵ Thus, they award punitive damages when the operator intentionally commits fraudulent acts.⁸⁶

⁷⁷ Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Disputes over Punitive Damages for Food and Drug (Draft for Solicitation of Comments), 30 November 2023.

⁷⁸ J Zhang, "Work Report of the Supreme People's Court – At the 2nd Session of the 14th National People's Congress" (8 March 2024) <<http://gongbao.court.gov.cn/Details/91879661d9288abc72798a23b1ecec.html>> (last accessed 18 July 2024).

⁷⁹ Art 55, CRPL 2013.

⁸⁰ Art 68 of the Supreme People's Court's Several Opinions on Implementing the General Principles of the Civil Law of the People's Republic of China 1988 (Trial Implementation).

⁸¹ Art 148, Civil Code of the People's Republic of China, promulgated on 1 January 2021. See also Art 21, Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the General Principles of the Civil Code of the People's Republic of China, 1 March 2022.

⁸² See e.g. Civil Trial Supervision Decision for Sales Contract Dispute of Wang Pengxiang and Yixing Yexianzi Ceramic Art Co Ltd. (2022) Jin Min Shen No 1438 (holding that wrongful labelling information does not mislead the consumer, thus there is no fraud in this case.)

⁸³ See e.g. Civil Decision for Retrial of Sales Contract Dispute of Xiao Yinkai, Jiang Dinghua etc (holding that the fact that an instruction book is missing for the printer and the warranty period expires does not prove a subjective intention of fraud from the seller side.)

⁸⁴ BY Liu & ZH Wei, "Theoretical Analysis and Legal Application of 'Knowing Fake and Buying Fake'," (2017) Legal Forum 3, 62, 67–68.

⁸⁵ ZJ Xiong, "Does Administrative Law Violation Really Not Need Consequences?" (2017) 3 Administrative Law Study 33, 36; SN Ying & X Liu (eds), *Theory and Practice of Administrative Punishment Law* (Beijing, China Social Science Publisher, 1996), 98.

⁸⁶ See e.g. Zaozhuang, Retrial Investigation and Trial Supervision Decision for Sales Contract Dispute of Lihu Automobile Marketing Service Co Ltd and Fujing (holding that sellers are obliged to disclose full information of the cars and conceiving information constitutes fraud.)

V. A systematic analysis of the causes of regulatory inconsistencies

This paper posits that the 30-year regulatory inconsistencies observed in the context of professional consumers are an unavoidable consequence of the current legal system. The historical reason for this is that the legislature, the National People's Congress (NPC), did not anticipate the emergence of professional consumers when drafting the CRPL.⁸⁷ This has resulted in a profit margin⁸⁸ that falls within the current legal loophole. The author notes that in order to address the gap in the profit margin, the administration and the judiciary have used their limited legislative powers to intervene. As the state authority structure has shifted its focus from promoting legislative and administrative unity to prioritizing decentralization,⁸⁹ the issue of *legislative departmentalization* leads to regulatory inconsistencies. This section discusses how unbalanced interactions among the three branches have led to unique regulatory inconsistencies in the regulation of professional consumers.

I. Inconsistent formulation of legal documents by the administration and the judiciary

The primary reason is that due to legislative departmentalization, the administration (the State Council), the judiciary (the SPC and the Supreme People's Procuratorate (SPP)), and the local people's congresses (LPCs) all hold varying degrees of legislative power. Because the NPC rarely legislates, there is ample room for the administrative and judicial branches to exercise their legislative powers, resulting in regulatory inconsistencies.

The State Council has legislative power in three ways with different degrees of discretion, leading to abuse of discretion and lack of legal basis. First, it can promulgate *administrative regulations* according to the Constitution.⁹⁰ The State Council has considerable discretionary power in this category, leading to the risk of abuse of power. Second, the Legislation Law allows the State Council to promulgate administrative regulations that clarify the implementation of laws.⁹¹ Administrative regulations in this category are less likely to conflict with laws.⁹² Third, in the absence of laws, the State Council can issue administrative regulations with the approval of the NPC.⁹³ Due to the lack of a legal basis in existing laws, administrative regulations issued under the third category may face instability if the NPC later enacts a law. The organs of the State Council are also authorized to promulgate *rules* according to their own discretion.⁹⁴

The judiciary also enjoys discretion when it issues judicial interpretations relating to the specific application of laws in legal proceedings.⁹⁵ Although interpretations must be submitted for recording by the NPC Standing Committee, the exercise of judicial power is typically safeguarded from state authorities' interference under the *principle of judicial independence*.⁹⁶ In practice, the SPC and the SPP consult with the State Council Legal Office and sometimes even with the NPC when drafting judicial interpretations; there is no official legal review process for judicial interpretations in China. Thus, the power to

⁸⁷ Wang, *supra* n 56, 77.

⁸⁸ HM Shang, "Judicial Recognition of Profit-exploiting Behavior of Professional Consumers—Empirical Research Based on Publicized Higher Court Judgments" (2019) 8 *Legal Application* 61, 73.

⁸⁹ LW Wang, "Bureaucratization of Legislation: A New Perspective to Understand China's Legislative Process" (2016) 2 *China Law Review* 114, 115.

⁹⁰ Art 89, the Constitution.

⁹¹ Art 11, the Legislation Law.

⁹² YX Huang, "Power Allocation between the Legislature and Administration," (2020) 1 *The Jurist*, 47, 56.

⁹³ Art 12, the Legislation Law.

⁹⁴ *Ibid*, Art 91.

⁹⁵ *Ibid*, Art 119.

⁹⁶ Art 4, Organization Law of People's Courts of the People's Republic of China (Revised in 2018).

develop judicial interpretations is at the discretion of the SPC and the SPP,⁹⁷ as long as it falls within the legal scope prescribed by law.⁹⁸

Local legislative processes are also departmentalized, which has three consequences. First, similar to the national level, local legislative processes are used to actualize and consolidate departmental interests, resulting in a game of interests among different branches. Second, local governments may be reluctant to make progress on major legislative initiatives involving complicated interests, leaving gaps in the local legal system. These gaps are typically filled by soft law documents and court rulings, leading to more inconsistencies. Finally, due to limited expertise in legislative matters, local regulations face a variety of challenges, including misinterpretation of higher-level legal texts, inadequate legislative authority, duplication of problematic higher-level laws, and delays in revision and repeal.⁹⁹

2. Inconsistent legal interpretations by the administration and the judiciary

The second reason for legal inconsistencies for professional consumers is that the administration and the judiciary interpret the law differently. Interpreters may give undue weight to their personal understanding of legislative intent when applying the law, potentially leading to biased results.¹⁰⁰ This tendency is not effectively curbed in China because case law is not binding. Although the SPC has been issuing typical cases since 1985, few of them have involved professional consumers. The SPC has also issued guidance cases to standardize national adjudication practices, but this practice has only been in place for 10 years, and unification on professional consumers has not been successful.

An illustrative example is punitive damages in food and drug law. The State Food and Drug Administration (SFDA, now merged into SAMR) has interpreted the scope of punitive damages to include purchases without consumption.¹⁰¹ Therefore, without requiring proof of actual consumption or resulting harm, the SFDA would consider that a purchaser who did not consume expired dairy products is still entitled to recover damages. In contrast, courts have applied different standards of review to determine the application of punitive damages. For example, some courts apply a *formal standard of review*¹⁰² that considers any deviation from the national food safety standard to be a violation of the FSL. However, some other courts, interpreting the CRPL as intended to protect social and economic order,¹⁰³ adhere to the substantive standard of review. They examine the seller's subjective knowledge of the product defect and the actual harm caused to the victim's health and well-being.¹⁰⁴ Therefore, when dealing with unconsumed expired dairy products, courts with differing interpretations of legislative intent may reach different rulings, ranging from awarding to denying punitive damages.¹⁰⁵

⁹⁷ Y Miao, "Nature and Effectiveness Hierarchy of Judicial Interpretations," (2023) 2 Peking University Law Journal 425, 440.

⁹⁸ Art 119, The Legislation Law.

⁹⁹ WB Chen & YY Jiang, "Studies on the Relationship between Beijing Administration-Legislation Relation – Based on Beijing NPC Legislative Process," (2017) 3 Journal of Beihang University (Social Science Edition) 17, 19.

¹⁰⁰ C Li, "On Conflicts in Legal Interpretations with the General Clause on Trademark Prohibition," (2015) 8 Intellectual Property 3, 5.

¹⁰¹ CY Xin, *Interpretation of the Food Safety Law of the People's Republic of China* (Beijing, Law Press, 2015), 376.

¹⁰² *Ibid*, 122.

¹⁰³ Art 1, CRPL 2013.

¹⁰⁴ Art 47 of Tort Liability Law only provides one situation for punitive damage, which is "defective products are manufactured or sold despite knowledge of the product defects and have caused death or serious health problems of others." Art 1207 of Civil Code added one more situation for punitive damage, which is "failing to take effective remedial measures in accordance with the preceding article, thus causing death or serious damage to the health of another person."

¹⁰⁵ Ding, *supra* n 25, 122.

3. Confusion between administrative and judicial enforcement

The third reason for legal inconsistencies for professional consumers is the difference in administrative and judicial enforcement practices. As discussed above, legal liabilities in administrative and civil law are not always the same. Therefore, the assumption of administrative liability does not automatically lead to civil liability.¹⁰⁶ Nevertheless, some courts erroneously conflate the two, assuming that the agency's finding of a violation is conclusive. It is not uncommon for some courts to bypass legal analysis and simply refer to the administrative determination of violations as their factual finding, resulting in the imposition of punitive damages. In addition, courts may rule differently in cases with similar facts but no prior administrative record than in cases with a prior administrative record.¹⁰⁷ This practice has also led to inconsistent judicial decisions in cases with similar facts.

Fortunately, in order to minimize discrepancies in administrative and judicial enforcement, the CPC is mandated to create a *Unified National Market* in 2022.¹⁰⁸ The State Council is required to strengthen administrative regulations and develop standardization and normalization of market supervision.¹⁰⁹ In response, the SPC directs the judiciary to strengthen communication and cooperation with the administration in market regulation and law enforcement. In particular, the judiciary is striving to promote the unification of adjudication standards in administrative and judicial proceedings.¹¹⁰ Although the above two documents are soft law, they demonstrate the strong determination of the CPC, together with the administration and the judiciary, to unify adjudication standards and reduce legal inconsistencies.

VI. The future directions of regulating professional consumers in China

Professional consumers will persist as long as there is a profit margin created by regulatory inconsistencies. Fortunately, recent developments, particularly those highlighted during the thirtieth anniversary of the CRPL, aim to minimize regulatory gaps and steer professional consumers in the right direction. As for the future of professional consumers, the author believes that they will not disappear. As a private force to enforce the public objective of consumer protection, particularly in food and drug safety, its continued existence is assured. However, part of their role will be replaced by other legal measures, such as public interest litigation. Meanwhile, the legal system will strictly regulate their negative impact on market order. These projects exemplify China's unique co-governance strategy.

1. Reshaping professional consumers as a vital player in co-governance

As mentioned above, the CRPL implementing regulation has recently entered into force, introducing the concept of *consumer protection co-governance*¹¹¹ for the first time in 30 years. It is a sign that public authorities are taking a more holistic approach to the regulation of private actors in the field of consumer protection. The current cohort of professional consumers is a double-edged sword. Neither their positive nor negative effects can be

¹⁰⁶ Art 187, Civil Code.

¹⁰⁷ Ding, *supra* n 25, 123.

¹⁰⁸ Opinions of the CPC Central Committee and the State Council on Accelerating the Development of a Unified National Market, effective on 25 March 2022.

¹⁰⁹ *Ibid*, Art 19.

¹¹⁰ Art 22, Opinions of the Supreme People's Court on Providing Judicial Services and Guarantee for Accelerating the Development of a Unified National Market, effective on 14 July 2022.

¹¹¹ Art 3, CRPL Implementation Regulation.

ignored. While they may pose a threat to a fair market order, they may also contribute to a private enforcement of the law to achieve public goals. As one judge noted, counterfeiters will not be able to maintain their market if consumers remain vigilant and are able to identify fakes.¹¹² This paper argues that with the promulgation of the CRPL implementing regulation in 2024, the regulatory system has started a new trend to reshape the professional consumer, maximizing the positive regulatory effect while eliminating the negative one. However, challenges remain.

a. China's co-governance strategy in principle

The pivotal importance of private actors in a regulatory system should not be underestimated. The rise of the private sector in the *regulatory society*¹¹³ has led to a decentralized approach to regulation, diverging from the traditional notion of the *regulatory state*.¹¹⁴ The *co-governance* theory acknowledges the important role of private actors and utilizes an institutional and policy-level framework that engages all involved parties in policymaking and execution.¹¹⁵ While government regulations may have intrinsic drawbacks such as incompetency, corruption, and regulatory capture, private ordering and market mechanisms can fill in the gaps. Market players can address most market failures without government intervention, and private litigation can serve as a backup solution when the market cannot function perfectly.¹¹⁶

Consumer protection co-governance is part of the overall state strategy of *Co-governance*, which is also prioritized in the policy goals of the CPC. This state strategy aims to improve the system of socialism with Chinese characteristics. President Xi Jinping has stressed the need to improve the social governance system through Party leadership, government responsibility, social coordination, public participation and upholding the rule of law.¹¹⁷ For example, in terms of food and drug safety regulation, a modern governance system should prioritize *co-governance* and *co-sharing* as fundamental components.¹¹⁸ In terms of consumer protection, *co-governance* should include business compliance, industry self-discipline, consumer participation, government supervision and social supervision.¹¹⁹ Professional consumers fit perfectly into the *co-governance* strategy, considering their positive contribution to the regulation of the consumer market, especially the food and drug market.

b. Challenges and proposals for implementing the co-governance strategy

Although the *co-governance* system recognizes the *quasi-regulatory role* of professional consumers, it lacks clear guidance on how to fully involve them in protecting their rights and maintaining market order. Instead, there has been a trend to avoid the issue of professional consumers by not distinguishing them from ordinary consumers. The SPC instructs courts to focus on the purchase amount of defective products rather than other

¹¹² Appellate Court Judgment for Product Dispute between Han Fukun and Licang District Beautiful Supermarket (2019) Lu 02 Min Zhong No 263.

¹¹³ See generally G Majone, "The Rise of the Regulatory State in Europe," (1994) 17 (3) *West European Politics* 77; J Black, "Critical Reflections on Regulation," (2002) 27 *Australian Journal of Legal Philosophy* 1.

¹¹⁴ M Senn, *Non-State Regulatory Regimes: Understanding Institutional Transformation* (Dordrecht; London; New York, NY: Springer-Verlag Berlin Heidelberg, 2011), 28.

¹¹⁵ V Pestoff, T Brandsen & B Verschuere (eds), *New Public Governance, the Third Sector, and Co-Production* (New York; London: Routledge, 2012), 20.

¹¹⁶ A Shleifer, "Understanding Regulation," (2005) 11 (4) *European Financial Management*, 439, 440–41.

¹¹⁷ JP Xi, *The Governance of China IV* (Beijing: Foreign Languages Press, 2022).

¹¹⁸ Opinions of the CPC Central Committee and the State Council on Deepening Reform and Strengthening Food Safety Work, 9 May 2019.

¹¹⁹ Art 3, CRPL Implementation Regulation.

factors.¹²⁰ In other words, whether the purchase is for daily consumption or for profit, punitive damages will be awarded. Unlike in the past, the basis of calculation has been changed from the actual purchase amount to a reasonable amount. It is understandable that the SPC seeks to regulate professional consumers by applying a uniformly lower standard of adjudication. This standard would discourage profiteering by professional consumers without negatively impacting the reasonable compensation claims of ordinary consumers.

Nevertheless, the new SPC mandate may create further inconsistencies as it still fails to address the fundamental question of whether the skewed consumer protection should extend to professional consumers. On the consumer side, the SPC Guidelines provide insufficient protection. Instead, the legal system penalizes ordinary consumers who make purchases in excess of reasonable amounts because of concerns about professional consumers. It also leaves a considerable amount of discretion to local courts to decide what constitutes a reasonable amount. On the seller side, the SPC Guidelines fail to effectively deter and punish sellers of defective products due to the lower punitive damage standard. In summary, the new SPC Guidelines have not effectively addressed the issue of professional consumers. As a side effect, it may reduce consumer redress in general. In order to effectively utilize the positive influence of professional consumers under the co-governance strategy, China's regulatory system should strike a balance between protecting their lawful conduct and punishing their unlawful conduct to ensure a sound market order.

This paper proposes to achieve this goal through a responsive regulatory system. Responsive regulation suggests that government should respond to the regulatory environment and the behavior of the regulated in deciding whether a more or less interventionist response is needed. Regulation should adapt to critical differences in industry structures, using different thresholds and types of regulation as appropriate.¹²¹ Moreover, regulatory objectives are more likely to be achieved if regulators adopt a system of sanctions and use a choice of regulatory approaches that vary according to their degree of interventionism.¹²² The use of the tit-for-tat strategy can be an effective approach to combining punishment and persuasion. Therefore, this article recommends differentiating rules for professional consumers from those for ordinary consumers. Stricter rules can be imposed on professional consumers once their identity has been confirmed by the legal authority. For example, agencies and courts could apply lower whistleblower awards and compensation standards to professional consumers than to ordinary consumers to discourage profiteering. In addition, courts could impose a higher burden of proof on professional consumers than on ordinary consumers. For example, courts could uniformly impose a two-step burden of proof on the professional consumer. The first step is to prove that the purchase is for *living consumption needs*, and the second step is to establish that the seller's products do not comply with legal requirements.

2. Smoothing the public interest litigation mechanism

The pursuit of illegal market activities for profit is not unique to the Chinese market. What makes China different is its 30 years of regulatory development, which has been swinging back and forth over time. Legal uncertainty has added to the enigmatic nature of China's professional consumers. Other jurisdictions have provided consumers with public interest litigation to legitimately pursue profits, such as representative actions in the European

¹²⁰ Work Report of SPC, *supra* n 78.

¹²¹ I Ayres & J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992), 4.

¹²² *Ibid.*

Union¹²³ and class actions in the United States.¹²⁴ Similarly, China's recent regulatory changes have indicated a trend toward promoting public interest litigation as a legal method to channel profit-seeking activities. However, due to the attention paid to the extortion of litigants, China's public interest litigation system exhibits different features with Chinese characteristics. The following section assesses the effectiveness and future development of the two current mechanisms for public interest litigation.

a. Challenges in civil consumer public interest litigation

There are currently both of which are accessible to limited groups of litigants. The first mechanism is the civil consumer public interest litigation, which is initially accessible to consumer associations.¹²⁵ However, this type of public interest litigation has not been fully functional due to the inactivity of consumer associations. On average, consumer associations filed only thirty-two civil consumer public interest litigation cases per year from 2013 to 2021.¹²⁶ Although consumer associations are currently exploring effective ways to use the public interest litigation mechanism,¹²⁷ this statistic is inconsistent with China's position as the world's second largest consumer market. In response to the suggestion to broaden the range of plaintiffs in civil public interest litigation,¹²⁸ the Civil Procedure Law expanded the range of plaintiffs to include social organizations recognized by law or authorized by the NPC to represent *numerous consumers* (众多消费者).¹²⁹ However, the current legal system does not specify which social organizations, other than consumer associations, are eligible for civil public interest litigation. At present, there is no clear guidance to specify the standard of *numerous consumers* or which social organizations are authorized by law or by the NPC. Judges are still concerned that qualified social organizations may not be able to represent the large number of consumers in China.¹³⁰

b. Promotion of procuratorial public interest litigation

The second and more common mechanism of public interest litigation is initiated by public prosecutors. Procuratorates are able to initiate civil cases related to food and drug law infringements¹³¹ and administrative public interest litigations against administrative agencies that illegally exercise their authority or fail to act, causing harm to the national or societal public interest.¹³² This scope is distinct from that of civil consumer public interest litigations, which covers all violations of consumer rights by sellers but excludes those by administrative agencies. Director of the SPP Civil and Administrative Prosecution

¹²³ See e.g. Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, Official Journal of the European Union, L 409/1, 4.12.2020.

¹²⁴ See e.g. 28 USC App Fed R Civ P Rule 23; Cal. Civil Code §§ 1750.

¹²⁵ Art 47, CRPL 2013.

¹²⁶ SPP, "Member Liu Hongyu: Cultivate consumer civil public interest litigation entities" (8 March 2021) <https://www.spp.gov.cn/spp/zd gz/202103/t20210308_511349.shtml> (last accessed 18 July 2024).

¹²⁷ China Consumer Association, "Annual Report on the Protection of Consumer Rights and Interests in China (2022)" (16 May 2023) <<https://www.cca.cn/xxgz/detail/30665.html>> (last accessed 18 July 2024).

¹²⁸ SJ Qi, "Public Interest Litigation and the Expansion of Eligible Parties" People's Court Daily, 11 October 2012.

¹²⁹ Art 58, Civil Procedural Law, amended in 2023; Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Consumer Public Interest Civil Litigation Cases (2020 Revision), effective on 1 January 2021.

¹³⁰ XC Lu, Zhengzhou Court, "Analysis of the legal issues of consumer civil public interest litigation" (20 October 2016) <<https://eqqfy.hncourt.gov.cn/public/detail.php?id=2373>> (last accessed 18 July 2024).

¹³¹ Art 58, Civil Procedure Law of the People's Republic of China (Amended in 2021), effective on 1 January 2022.

¹³² Art 21, Interpretation of the Supreme People's Court and Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases (2020 Revision).

Office provided an explanation for the special design of the case scope.¹³³ The issue of food and drug safety remains a significant concern for all sectors of society. Secondly, the procuratorate found that the failure and disorderly actions of the administrative bodies responsible for ensuring food and drug safety are significant contributing factors to safety issues in the food and drug industry. Thirdly, the central government's restructuring team has made it clear that food and drug safety should be included in such litigation.

In general, consumer public interest litigations brought by procuratorates in the second mechanism outnumber those brought by consumer associations in the first mechanism. In 2021, procuratorates initiated over 30,000 public interest litigations in the field of food and drugs, with an annual growth rate of 10%.¹³⁴ Since 2020, the SPP has issued model cases concerning public interest in food and drug cases annually.¹³⁵ Recent developments suggest that procuratorates are increasingly involved in the second mechanism of public interest litigations, while legal authorities have been hesitant to improve the first mechanism for over a decade.

In conclusion, it can be inferred that China is concerned about abusive litigations and tends to endorse public interest litigations by public powers, thus it is more cautious in granting private actors legal standing to bring public interest litigation and does not actively promote consumer public interest litigations by social organizations. Instead, China is enthusiastic about developing those by procuratorates. It is reasonable to expect that the procuratorate is attempting to displace professional consumers through public interest litigation to fulfill its function of detecting illegal conduct and maintaining a fair market order.

3. The Chinese approach to reconciling co-governance with public interest litigation

It is interesting to note that the co-governance system of consumer protection, which endorses the private enforcement of public objectives by professional consumers, may contradict the promotion of procuratorial public interest litigation, which tends to displace professional consumers. This apparent contradiction, however, corresponds to the unique Chinese regulatory approach. China's regulatory system is dominated by public power. Party leadership and government supervision always take precedence over social coordination and public participation.¹³⁶ Therefore, although the regulatory system recognizes the positive function of professional consumers in combating illegal businesses, it still upholds the dominant role of public power in maintaining market order. This trend, however, should not be interpreted as the suppression of professional consumers. Instead, China's regulatory approach represents an innovative way to reshape professional consumers by reducing their profit opportunities while maintaining their positive functions.

VII. Conclusion

China's regulatory path over the past 30 years has been volatile, making professional consumers unique to China. Myers McDougal famously stated that decisions are responses

¹³³ The Paper, "Why is food and drug safety included in the scope of administrative public interest litigation initiated by the procuratorate?" (27 June 2018) <https://m.thepaper.cn/kuaibao_detail.jsp?contid=1719174&from=kuaibao> (last accessed 18 July 2024).

¹³⁴ SPP, "The Supreme People's Procuratorate released the '3.15' typical case of food and drug safety public interest litigation of the procuratorate" (15 March 2022), <https://www.spp.gov.cn/spp/xwfbh/wsfbt/202203/t20220315_549156.shtml - 1> (last accessed 18 July 2024).

¹³⁵ See e.g. SPP, "The Supreme People's Procuratorate released typical cases of public interest litigation on food and drug safety by procuratorial organs" (15 March 2023), <https://www.spp.gov.cn/xwfbh/wsfbt/202303/t20230315_608471.shtml#1> (last accessed 18 July 2024); SPP, "Typical Cases of 'Public Interest Litigation to Protect a Better Life'" (27 February 2022), <https://www.spp.gov.cn/spp/xwfbh/wsfbt/202302/t20230227_604248.shtml> (last accessed 18 July 2024).

¹³⁶ Xi, *supra* n 117.

to precipitating events, which are best described as value changes in social processes.¹³⁷ China's regulatory approaches have been a response to the rapid social and economic development in the consumer market. However, although China's legal authorities have been attempting to grant proper legal standing to professional consumers, but it appears that the legal system has not been able to keep up with the rapid economic and social development and changing political directions. Given the paucity of discussion in English literature regarding this distinctive cohort of consumers and their distinctive regulatory framework, this paper aims to address this gap by introducing, analyzing and predicting the future of China's regulations on professional consumers.

This paper commences with an analysis of the concept of professional consumers and a summary of three methods that have been employed for profit-making purposes over the past three decades. Based on a comprehensive review of representative regulatory records over the past 30 years, Part 3 generates a tendency chart to present the regulatory development trend since 1994. The paper divides China's 30-year regulatory history on professional consumers into five periods: endorsement (1994–1997), prohibition (1997–2007), re-endorsement (2007–2016), re-prohibition (2016–2024), and mixed endorsement and prohibition (2024–). Despite the constant adjustments that occurred during each period, the five-period division demonstrates that there have been significant changes in the legal positions of professional consumers.

This paper presents a comprehensive analysis of the disputed issues that contribute to the legal inconsistency in Part 4. The author argues that due to a number of unresolved value judgments centered on the CRPL's skewed protection of consumers, the legal system has failed to clarify key issues for both consumers and sellers, leading to fluctuations in regulations. Part 5 continues to explore the reasons behind the legal inconsistency by examining the legal framework in China. This paper presents a comprehensive examination of the interrelationship between the legislative, executive, and judicial branches, identifying three key factors contributing to regulatory inconsistencies. First, the legislature's failure to anticipate the emergence of professional consumers has created a legal gap. Legislative departmentalization has enabled the administration and judiciary to exercise their respective legislative power, resulting in the production of more inconsistent legal documents. Additionally, discrepancies in legal interpretation of existing regulations between the administration and the judiciary have exacerbated inconsistencies in law enforcement. Finally, there is a loose link between the administration and the judiciary in the adjudication of compensation claims by professional consumers, leading to inconsistent results in cases with similar facts.

The author predicts that professional consumers will not become obsolete, but rather, will undergo a transformation as a result of recent breakthrough developments in 2024. Part 6 concludes by projecting two upcoming legal positions for the future of professional consumers. The first is the transformation of professional consumers into a crucial actor in the state's newly implemented *consumer protection co-governance strategy*. In essence, regulating professional consumers is primarily a policy issue rather than a legal one. The *co-governance* principle will secure their existence. The second position is that of displacement by procuratorial public interest litigation. Although seemingly contradictory, these two positions exemplify a distinctive Chinese approach to implementing a co-governance strategy, which is characterised by the dominant role of public power.

Competing interests. The author has no conflicts of interest to declare.

¹³⁷ M S McDougal, "Law as a Process of Decision: A Policy-Oriented Approach to Legal Study" (1956) 1(1) *Natural Law Forum*, 53, 65.

Appendix I:

Table I. Summary of Legal Liabilities for Providers of Inferior or Counterfeit Products and Services

Legal documents	Year	Punishment system	Nature of liabilities
CRPL	1994	Compensation shall be <i>one</i> time of the original price. (Article 49)	Civil liabilities
	2013	Compensation shall be <i>three</i> time of the original price, with a minimum of RMB 500 if the compensation is less than RMB 500. In case of death or severe health damage, a seller who knowingly provides a product or service is subject to punitive damages of <i>twice</i> the amount of loss. (Article 55)	
		An administrative fine of up to 10 times the illegal income, a maximum of RMB 500,000 if there is no illegal income, even suspension of business. (Article 56)	Administrative liabilities
FSL	2009	Consumers can recover <i>10</i> times the amount paid or <i>three</i> times the damages amount from the manufacturer of substandard products or from business operators who knowingly trade in such products. Compensation amounts less than RMB1,000 will be rounded up to RMB1,000. (Article 148)	Civil liabilities
		A fine of up to 30 times the product value, revocation of business license for the company, up to 15 days detention for the persons in charge, and revocation of practice license for the inspectors. (Article 123)	Administrative liabilities
DAL	2019	Consumers can recover <i>10</i> times the amount paid or <i>three</i> times the damages amount from the manufacturer of substandard products or from business operators who knowingly trade in such products. Compensation amounts less than RMB1,000 will be rounded up to RMB1,000. (Article 144)	Civil liabilities
		RMB 5,000,000 administrative fine and suspension of business to the company, and RMB 200,000 fine, 15 days detention and lifetime ban from drug business to the persons-in-charge. (Articles 118, 122, 125)	Administrative liabilities
Criminal Law	1997	Crimes of Producing and Marketing Fake or Substandard Commodities: Sentences up to life imprisonment, and up to confiscation of property. (Article 140)	Criminal liabilities
	2011 The Eighth Amendment	<ul style="list-style-type: none"> • Crime of Manufacturing, Selling or Providing Counterfeit Drugs: Sentences up to death penalty, and up to confiscation of property. (Article 141) • Crime of Manufacturing, Selling or Providing Inferior Drugs: Sentences up to life imprisonment, and up to confiscation of property (Article 142) • Crime of Manufacturing and Selling Food not up to the Food Safety Standards: Sentences up to life imprisonment, and up to confiscation of property. (Article 143) • Crime of Manufacturing or Selling Toxic or Harmful Food. (Article 144) Sentences up to death penalty, and up to confiscation of property. 	

Appendix II

Table 2. Attitude Changes in Media Coverage of Professional Consumers (PC)

Positive			Neutral			Negative		
Year	Media	Title	Year	Media	Title	Year	Media	Title
			2013	Beifang	PC neither noble nor vile			
2014	Beifang Youth	PC should be respected, not ridiculed	2014	People's Daily	PC walking between the "right" and "wrong" in law	2014	Shenzhen Business Newspaper	Should strictly punish PC
2015	Southern Metropolis Daily	A conversation with PC: the more the better						
2016	Xining Night	PC: Hero or evil?				2016	The First Finance	PC changed
	Guangming Daily	Do not deny the value of PC					Democracy and Rule of Law Newspaper	PC: scavengers or parasites?
							Beijing Daily	PC decayed to professional extortioners
						2019	People's Daily	From Counterfeit fighting to fake fighting
			2022	Economic Daily	Why counterfeit disputes re-arise?			
			2023	South Daily	Look into PC from a cucumber dish			
2024	Procuratorate Daily	Using the rule of law to guide professional anti-counterfeiting onto a standardized path						

Appendix III:

Table 3: Attitude Changes in Legal Documents on Professional Consumers

Positive			Negative		
Year	Document Title	Content	Year	Document Title	Content
1994	CRPL (1994)	Consumers for livelihood need are under protection.			
1998	Product Quality Complaint Handling Methods (abolished in 2020)	Consumers have the right to file complaints.			
			2001	Speech from the Supreme People's Court	PC are not consumers that are under protection of CRPL.
			2004	Shanghai High People's Court	No fraud is found against PC, thus no support to compensation requests.
2007	Guidance by the Shenzhen Intermediate Court	PC with purpose of fighting against fake products are consumers that are under protection of CRPL.			
2009	FSL	Compensation will be provided at a rate of 10 times the purchase price or 3 times the amount lost if the food fails to meet safety standards.			
			2012	Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) Measures on Quality petition handling	Not accepting requests from professional purchasers with knowledge of product drawbacks.
2013	CRPL (2013)	The provision stays.			
	Provisions of SPC on Certain Issues Concerning the Application of Laws in Hearing Cases Involving Disputes over Foods/Drugs (revised in 2021)	PC of food and pharmaceuticals failing to meet standards are protected.			
2014	SPC reply	Definition of consumers are broad, including PC.			

(Continued)

Table 3: (Continued)

Positive			Negative		
Year	Document Title	Content	Year	Document Title	Content
	Administration for Industry and Commerce (AIC) measures on handling consumer complaints (abolished)	Not recognizing 2012 AQSIO Measures on Quality petition handling			
2015	State Council Guidance	Strengthen punitive compensation and crashing down on infringements.			
2016	State Council meeting	Establish enterprise blacklist and huge punitive compensation mechanism.	2016	Shenzhen Intermediate Court Meeting minutes	Not supporting food purchasers seeking for profits.
	Measures for the Management of Food and Drug Complaints and Reports (abolished in 2020)	All citizens and organizations are encouraged to report any violations and may be eligible for awards.		Chongqing High People's Court response	Not supporting purchasers acknowledging quality issues due to lack of good faith
				Implementation Measures of CRPL (draft for review, never enacted)	Excluding consumers for profit seeking.
				Jiangsu Supreme Court Meeting Minutes	Not supporting purchasers acknowledging quality issues except in the food and drug fields.
2017	Measures for Rewards for Reporting Food and Drug Violations (abolished in 2021)	All citizens and organizations are encouraged to report any violations and may be eligible for awards.	2017	Supreme People's Court reply	Will eventually hinder activities, with the exception of the food and drug industries.
			2018	Shenzhen Municipality Food Safety Supervision Regulation (amended in 2020)	Stop investigation when found out of reasonable scope or seeking profits, but put the information in the supervision group.
				Guiding Opinions of the Shanghai Municipality on Effectively Responding to Occupational Claims and	Determining PC by considering the intended use, frequency of consumption, knowledge of the product's

(Continued)

Table 3: (Continued)

Positive			Negative		
Year	Document Title	Content	Year	Document Title	Content
				Occupational Whistleblowing Behaviors and Maintaining the Business Environment	authenticity, purchase history, and any relevant complaints or legal actions. Establish a watchlist.
2019	DAL	Compensation of 10 times of price or 3 times of lost.	2019	SAMR Measures for Handling Complaints	Complaints not for living consumption needs are excluded.
				State council opinion on deepening food safety work	Crash down malicious reports with the purpose of seeking illegal profits
				State council guidance on promote platform economy	Crash down blackmailing activities in the name of “fighting against fake products”
2020	Jinhua reply	Crash down PC except in food and pharmaceutical fields.	2020	SAMR Interim Measures on Handling Complaints	Not accepting complaints not for daily consumption.
2021	SPC: Summary of adjudication rules for determining the nature of “knowingly buying fakes”	General support to PC in the food and drug sector.	2021	SPC: Summary of adjudication rules for determining the nature of “knowingly buying fakes”	Denying claims based on purchase purpose, absence of fraud, the principle of estoppel, and violation of the Ethics of Socialism.
	Interpretation of SPC on Several Issues Concerning the Application of Law in the Hearing of Civil Cases Involving Food Safety (I)	Defenses claiming that no personal injury has been caused cannot be used to support avoiding punitive damages if the food fails to meet food safety standards. Specifies seven situations constituting “knowingly purchase.”		Ningde measures for handling malicious complaints	Defining malicious or improper purposes by considering knowledge, purchase amount, frequency of purchases and others.
2022	SAMR reply	No classification of PC and consumers due to difficulty to differ “livelihood need or not”	2022	Fuzhou measures for handling malicious complaints	As 2021 Ningde measures.
2023	Interpretation of the SPC on Several Issues Concerning the Application of Law in the Trial of	Limit punitive damages to the reasonable purchase amount instead of the	2023	Guiding Opinions of the SPC on Optimizing the Rule of Law Environment and	Curb malicious “rights protection” behaviors in accordance with the law.

(Continued)

Table 3: (Continued)

Positive			Negative		
Year	Document Title	Content	Year	Document Title	Content
	Cases Involving Disputes over Punitive Damages for Food and Drug (Draft for Solicitation of Comments)	actual purchase amount.		Promoting the Development and Growth of the Private Economy	
				Wenzhou measures for handling malicious complaints	As 2021 Ningde measures.
				Foshan measures for handling malicious complaints	As 2021 Ningde measures.
				Fuzhou measures for handling malicious complaints	As 2021 Ningde measures.
2024	Implementing Regulations for CRPL	Complaints and reports must not be used to seek improper benefits or infringe upon the legitimate rights and interests of operators.	2024	Reply from the Zhaoyuan Administration of Market Regulation to the People's Representative's Suggestions	Governmental departments should cooperate to identify PC and establish a complaint and abnormal report list. It is important to gradually restrict PC, except in the food and drug market.
	SPC Work Report	Same as above.			

Appendix IV:

Table 4. Attitude Changes in Selected Judicial Decisions on Professional Consumers

Positive				Negative				
Case	Year	Court	Opinion	Case	Year	Court	Opinion	
1	1996	Tianjin Heping District Court	Award compensation due to illegal sales.	2	1998	Tianjin Hebei District Court	Multiple purchasing communications tools within 30 days is not for daily consumption, thus no protection under CRPL.	
	1997	Tianjin 1 st Intermediate Court	Sustain.			1998	Tianjin 1 st Intermediate Court	Sustain.
3	2009	Wuxi Chong'an District Court	Purchase not for daily consumption, thus no protection under CRPL.		3	2009	Beijing Shijingshan Court	Proofs of purchasing fake products (regardless of purpose) trigger CRPL protection.
		Wuxi Intermediate Court	Sustain.					
	2010	Wuxi Intermediate Court	Sustain.					
	2013	Wuxi Intermediate Court (retrial)	Purchase not for daily consumption does not deny fraud.					
4	2014	Beijing Intermediate Court	Cannot deny the identity of "consumer" due to multiple purchases.	5	2015	Dongguan 1 st Court	Ten times of compensation to profit-seeking purchases does not match the legal spirit of Food Safety Law.	
		5	2015			Dongguan 1 st Court	Ten times of compensation to profit-seeking purchases does not match the legal spirit of Food Safety Law.	
6	2018	Jiangsu High People's Court	FSL does not differentiate ordinary consumers from PC.	7	2018	Guangdong High People's Court	PC should not be protected in order to uphold social justice and prohibit profit-seeking from others' illegal actions.	
		7	2018			Guangdong High People's Court	PC should not be protected in order to uphold social justice and prohibit profit-seeking from others' illegal actions.	

(Continued)

Table 4. (Continued)

Positive				Negative			
Case	Year	Court	Opinion	Case	Year	Court	Opinion
8	2018	Guangdong High People's Court	CRPL regulate the purpose of consumption, not the identity of plaintiffs.	9	2018	Guizhou High People's Court	Repetitive consumption on the second day is regarded as being a PC, which deprive the plaintiff of CRPL protection.
				10	2019	Henan Supreme Court	The PC was not purchasing for livelihood, thus not a consumer under FSL.
				11	2019	Liaoning High People's Court	PC is for profit-seeking, not for personal consumption.
				12	2020	Shandong High People's Court	PC is for profit-seeking, thus not a consumer.
				13	2020	SPC guidance cases published in 2023	Only support compensation requests for reasonable purchase amounts while denying requests for subsequent purchases.
14	2023	SPC model cases of punitive damages for food safety	Limit punitive damages to the reasonable purchase amount instead of the actual purchase amount.				

Appendix V:

Table 5: Pandemic-Induced Attitude Changes on Professional Consumers

Year	Document Title	Content
2020 (abolished) & 2023	Beijing Municipal Administration for Market Regulation's Error Tolerance and Correction List for Minor Illegal Acts	Market supervision and management departments at all levels should leave sufficient room for development in new technologies, new industries, new business formats, new models and other fields, while adhering to the bottom line of quality and safety, and vigorously promote error tolerance and correction systems for minor violations.
2020	Jiangsu Regulations on Optimizing the Business Environment	Replace administrative punishments for minor violations with appointed talk, education and warnings.
2021	Revised Administrative Punishment Law	Art. 33: No punishment for: (1) minor offenses that did not result in serious harm; (2) first-time offenses; (3) unintentional offenses.
	SPC on Involving Socialism Core Value into judgment reasoning	Improve social-ethical reasoning in pandemic control decisions.
	Hangzhou guidance on exempt punishment for food business violations (trial)	Exempted penalties for food business violations.
	Shandong exempt and lesser punishment list for minor violations	Same as above
	Chongqing punishment exempt list for minor violation in market activities	Same as above
2022	66 Nantong Regulations on Optimizing the Business Environment	Establish five systems: (1) no penalties for first-time offenders; (2) exemption or lesser penalties; (3) no mandatory enforcement measures; (4) order the suspension of business and production to report; (5) "white list."
	Shenzhen consumer rights protection regulation (draft for opinion)	Exclude coverage for people who seek profit and run out of reasonable amount of living consumption needs.
2023	Ningbo guidance of no punishment on 10 first and minor violations	No punishment for: (1) minor violations that did not result in serious harm; (2) first time violations; (3) no fault violations.