

Definition of *Fake and Substandard Goods* in the Crime of Manufacturing or Selling Fake and Substandard Goods

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Abstract

The core of the determination of the crime of manufacturing or selling fake and substandard goods lies in the accurate definition of *fake and substandard goods*. In judicial practice, there are problems such as over-reliance on administrative determination and neglect of independent judgment of criminal illegality, which leads to the situation that administrative determination dominates criminal judgment. By analyzing the relationship between criminal law norms and administrative pre-law, combined with the principle of unity of legal order, this paper puts forward that both the formal standard and the infringement of substantive legal interests should be taken into account in the identification of *fake and substandard goods*, and the identification standards can be improved by clarifying the scope of legal interests protection, limiting the starting conditions of judicial expertise, and strengthening the rules of linkage between administrative enforcement and criminal justice, so as to realize the dynamic protection of market trading order and consumer rights by criminal law.

Keywords

Unity of the Legal Order; Judicial Independence in Criminal Cases; Administrative-Criminal Law Enforcement Nexus; Counterfeit and Substandard Products.

1. Introduction

With the in-depth development of China's market economy and the increasing variety of commodities, the crime of manufacturing or selling fake and substandard goods presents new characteristics such as hidden behavior, complicated products and cross-regional. In this context, how to accurately define *fake and substandard goods* has become a key issue in determining this crime in judicial practice. At present, there are many judgments that rely too much on administrative determination and ignore the independent judgment of criminal law, which leads to the blurring of the boundary between administrative violations and criminal offences, and even the judgment tendency of replacing the standard of criminal conviction with the standard of administrative punishment and confusing administrative law enforcement with criminal justice, which not only damages the modesty and independence of criminal law, but also affects the reasonable expectation and innovation vitality of market subjects. Based on the normative division between criminal law and administrative law, this paper systematically analyzes the identification standard of *fake and substandard goods* by combining the principle of unity of legal order and the theory of protection of legal interests, and puts forward a double-layer identification mechanism of *formal review and substantive judgment* to promote the transformation of judicial practice from *order maintenance* to *rights protection* and realize the accuracy and legalization of criminal governance.

2. Organization of the Text

2.1. Legal Connotation of *Fake and Substandard Goods* in the Crime of Manufacturing or Selling Fake and Substandard Goods

In recent years, cases of manufacturing or selling fake and substandard goods are characterized by hidden behavior and complicated products. In judicial practice, the phenomenon of *inconsistent application of the law in similar cases* often appears in the identification of *fake and substandard goods*, which stems from the cognitive deviation of the legal connotation of *fake and substandard goods*.

2.1.1. *Fake and Substandard Goods* from the Perspective of Criminal Law

According to Article 140 of Criminal Law of the People's Republic of China, the core element of the crime of manufacturing or selling fake and substandard goods lies in the identification of *fake and substandard goods*. The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Laws in Handling Criminal Cases of Manufacturing or Selling Fake and Substandard Goods (hereinafter referred to as the *Two-High Interpretation*) clearly defines *fake and substandard goods* as four types, namely, 1) The product mixed with inferior or adulterated products: The product quality is not up to the quality requirements stipulated by national laws, regulations or express standards because the producers or sellers mix impurities or foreign bodies into the product. For example, industrial oil is mixed into edible oil, which leads to the loss of basic properties of edible oil products. The key to this kind of behavior lies in the essential difference between the nature of the admixture and the product. 2) Fake products: The producers or sellers pass off products without certain performance as products with such performance. A typical example is the filling of low-grade liquor as Moutai liquor, the essence of which is to deceive consumers through the false statement of product functional attributes. 3) Defective products: The producers or sellers pass off low-grade products as high-grade products. For example, obsolete medical devices are sold as new products after renovation, and this situation needs to be judged in combination with the gap between the actual performance of the products and the declared standards. 4) Substandard products: refers to products that do not meet the quality requirements stipulated in the second paragraph of Article 26 of the Product Quality Law of People's Republic of China. This definition reflects the modesty of criminal law norms, and only acts that infringe on substantive legal interests are included in the scope of criminal regulation. From the legislative technology of the crime of manufacturing or selling fake and substandard goods, The legislator did not set up a blank criminal provision in this crime to establish the content of *violation of national product quality management regulations*, but embodied some objective behaviors in the product quality management regulations in the definition of this crime. The general expression used in this article needs to be systematically explained in combination with the *Two-High Interpretation*. Professor M.K. Zhang pointed out that *fake and substandard goods* in the sense of criminal law must be both *fake* (fake products which passed off as genuine ones) and *substandard* (quality defect), and the above two attributes of which are dangerous enough to cause serious consequences.[1]

2.1.2. *Fake and Substandard Goods* from the Perspective of Administrative Law

The definition of *fake and substandard goods* in administrative law shows obvious expansionary characteristics. A three-level identification system of *quality defect-performance defect-program violation* is constructed in Articles 26-40 of Product Quality Law of the People's Republic of China. The first level (Article 26): The product has unreasonable danger endangering personal and property safety. The second level (Article 27): The product does not have the required performance. The third level (Articles 30-32): Procedural violations such as missing marks, false labels, and failure to obtain production licenses. Therefore, *fake and*

substandard goods from the perspective of administrative law include not only products with substantial defects, but also products with formal defects such as logo defects and false origin, as well as products with management violations such as failure to obtain production licenses and compulsory certification.

This broad identification stems from the preventive needs of administrative supervision. For example, in 1989, eight categories of situations such as no inspection certificate and no expiration date have been included in Opinions on Severely Punishing those Responsible for Distributing Fake and Substandard Goods (hereinafter referred to as *Opinions*). The characteristics of administrative identification standards are mainly reflected in three aspects. First, formal defects can constitute illegality. It is clearly pointed out in *Opinions* that if the product name is not marked in Chinese or the production license information is not marked, it will be regarded as distributing *fake and substandard goods* after being ordered not to change. Second, the identification standard is variable. According to Article 53 of the Product Quality Law of the People's Republic of China, acts such as fraudulently using the factory name and address may be transformed between substandard goods and general violations due to the seriousness of the case. Third, the scope of supervision covers the whole process. From production qualification examination (such as Regulations on the Administration of Production Licenses for Industrial Products), circulation supervision (such as Measures for the Supervision and Administration of Commodity Quality in the Circulation Field) to after-sales accountability (such as Measures for the Administration of Defective Consumer Goods Recall), a strict supervision network has been formed.

2.1.3. Normative Division between Administrative Control and Protection of Legal Interests

In China's legal system, the normative division between administrative law and criminal law is embodied in the differences in value orientation and adjustment methods. According to the normative interpretation of Article 2 of Administrative Punishment Law of the People's Republic of China and Article 13 of Criminal Law of the People's Republic of China, the basic value orientation of administrative law is to maintain administrative order, and its adjustment means are preventive and timely. The criminal law, on the other hand, takes the protection of legal interests as its fundamental task, emphasizing the final sanction of major violations of legal interests. The identification of *fake and substandard goods* from the two legal perspectives has obvious conflicts in the linkage between administrative enforcement and criminal justice. Take the case of changing the label of expired food in a bakery as an example. Although this behavior violates Article 35 of the Product Quality Law of the People's Republic of China, which stipulates that expired and deteriorated products are not allowed to be sold, if the actual quality of the products is up to standard and no harmful consequences are caused, the judicial organs often adopt the view of Professor H.B. Chen that such purely formal violations should not be upgraded to criminal offences.[2] This difference essentially stems from the separation of the normative purposes of departmental laws-administrative law focuses on maintaining order, while criminal law emphasizes the protection of legal interests and requires the existence of substantive dangers.

2.2. The Substantial Judgment of Fake and Substandard Goods from the Perspective of Legal Interest Protection.

The core goal of administrative law is to effectively control specific administrative affairs, and its main function is to maintain social order and promote stable economic development. In contrast, the primary purpose of criminal law is to protect all kinds of legal interests. Only when specific legal interests are infringed, relevant behaviors may be recognized as crimes. Professor G.Q. Zhou pointed out that the judgment of criminal illegality should be independent of the administrative pre-law. Even if the product violates the administrative norms, it should not be

regarded as a criminal offence if it does not substantially infringe on the rights and interests of consumers.[3] The judicial organs should make a restrictive interpretation in combination with the infringement of legal interests to clarify the substantive illegality of criminal law. Therefore, adhering to the criterion of protecting the legal interests of criminal law plays an important role in promoting the fight against illegal and criminal work of manufacturing or selling fake and substandard goods.

2.2.1. Limitations of Traditional View of Legal Interests

1) Defects of the theory of institutional dependent legal interests

The traditional theory defines the legal interests of the crime of manufacturing or selling fake and substandard goods as *market economic order* or *product quality supervision system*, and this view of legal interests attached to the system has essential defects. L.K. Tu pointed out in A Special Arrangement of the Crime of Manufacturing or Selling Fake and Substandard Goods that the Criminal Law of the People's Republic of China places this crime in the chapter Crimes of Undermining Order of Socialist Market Economy, and its purpose is to maintain the order of market transactions.[4] However, Professor H.B. Chen hit the nail on the head and pointed out that there is a methodological error in this view that *system* or *order* is the essence of legal interests-the purpose of system existence is to protect specific legal interests, not that the system itself has independent value. This view confuses the relationship between *protection object* and *protection means*, alienates the market management system as a protection means into a protection object, and leads to the judgment of criminal illegality becoming a vassal of administrative management. For example, in the case of *Clothing with Substandard Ingredients* tried by The Primary People's Court of Tongxiang City of Zhejiang Province, although the clothing involved violated the provisions on ingredient identification of Product Quality Law of the People's Republic of China, its actual performance was not affected, and consumers knew the product was defective when they bought it, and the court still convicted it as *substandard product*. This kind of judgment logic directly equates administrative violations with criminal offences, ignoring the independence of criminal law protection interests.

2) The separation of abstract legal interests and substantial harm

The traditional view of legal interest takes the abstract collective legal interest of *market order* as the main protection object, which leads to the disconnection between the judgment of criminal illegality and the substantive harmful result. Typical cases such as *Putian-Shoes*, consumers know that they are buying imitations and paying far less than the genuine ones. There is no substantial deception in the transaction process, which is essentially a non-fraudulent act agreed by both parties, but the judicial organs still convict and punish them for *disrupting market order*. The illegality of this kind of behavior in infringement of trademark rights is not the content of this paper, but in the aspect of selling *fake and substandard goods*, this kind of judgment reflects the formal tendency of criminal illegality judgment under the abstract view of legal interests, which essentially confuses the essential difference between administrative illegality and criminal offences, making criminal law a means to strengthen administrative management.

3) The tendency of mechanical adjudication in judicial practice

Under the influence of the traditional concept of legal interests, the judicial organs have formed a judgment mode that *administrative law is used for qualitative and criminal law is used for quantitative.*, which presents three outstanding problems. First, the administrative illegality is directly equated with the criminal illegality. Second, the subjective cognitive state of the actor is ignored. Third, the boundaries between civil liability and criminal liability are confused. For example, in the *Refurbishment Case of Second-hand Air Conditioning* tried by The Primary People's Court of Xuhui District of Shanghai Municipality, the defendant sold the second-hand air conditioners after renovation. Although the actual performance of the products involved in

the case above reached the standard and the buyer could get rights relief through civil channels, the court still characterized the defendant's behavior as a crime of selling *defective products*. This way of judging leads to excessive involvement of criminal sanctions in the economic field that could have been adjusted by civil and administrative means, which violates the principle of modesty of criminal law.

2.2.2. Transformation and Theoretical Reconstruction of Modern View of Legal Interests

1) The rise of the core theory of consumer rights

The modern concept of legal interests advocates that the legitimate rights and interests of consumers, such as property rights and personal safety, are the core protection objects, and emphasizes the independent judgment of criminal illegality. Professor S.Q. Hu pointed out through comparative research that *property damage caused by substantial fraud* is the core requirement in Article 263 of The Criminal Code of the Federal Republic of Germany and Unfair Competition Prevention Act of the State of Japan.[5]

2) Construction of criteria for judging the substantial harmfulness.

Modern criminal law theory is undergoing a paradigm shift from *order maintenance* to *rights protection*. Under the requirement of this substantial harmfulness judgment, a three-level judgment system of *quality defect, cheating behavior and damage result* should be established. First of all, product quality defects need to reach the level that may endanger personal safety or major property losses. For example, Article 143 of the Criminal Law of the People's Republic of China sets the identification standard for fake and substandard food products as *substantial danger enough to cause serious food poisoning accidents or other serious food-borne diseases*. Secondly, there must be substantial deception. It is necessary to strictly distinguish between *insufficient disclosure* and *active deception*, and the standard for examining whether the sales behavior is fraudulent is whether it is enough to make the average person fall into a wrong understanding, such as misleading consumers through false propaganda or price. Finally, the causal relationship between the damage result and the cheating behavior must be proved. It is necessary to prove not only the material causality between product defects and damage results, but also the psychological causality between fraud behaviors and consumer decisions.

3) Theoretical disputes and practical adjustments in the transformation

The transformation of modern legal interest view faces the problem of balance between collective legal interest and individual legal interest. Some scholars are worried that focusing too much on consumers' rights and interests may weaken the maintenance of market order. For example, although products with counterfeit registered trademarks do not directly harm consumers' rights and interests, they may impact the genuine market order. At the same time, the substantive judgment mode also puts forward new requirements for the evidence system, and the judicial organs need to break through the dependence on expert opinions and comprehensively review the product performance, trading scenarios and consumer cognition. The transformation of substantive judgment paradigm from the perspective of legal interests protection is essentially the return of criminal rule of law from managerialism to rights protection. Reconstructing the identification standard with consumers' rights and interests as the core and substantial harm as the boundary can not only effectively curb major crimes of *fake and substandard goods*, but also avoid the generalization of criminal sanctions. In this way, the positioning of criminal law as a safeguard law and its principle of modesty can be organically unified.

2.3. Controversy and Dilemma in the Identification of *Fake and Substandard Goods* in Judicial Practice

At present, there are *three similarities* in judicial practice of identifying *fake and substandard goods*: administrative identification and criminal identification have the same standard, the same procedure (administrative appraisal report is directly adopted) and the same conclusion (administrative violation is criminal offence). This treatment mode is characterized by the tendency of formalization of appraisal standards, which confuses administrative violation and criminal offence, resulting in the judicial organs losing the independent judgment function of criminal law in handling criminal cases.

2.3.1. Formal Tendency in Appraisal

1) Excessive dependence on formal requirements

At present, there is an obvious tendency of *standard-only theory* in product quality appraisal. The standard of *not conforming to the quality status indicated by product description, physical samples, etc*" established in Article 53 of the currently effective Product Quality Law in China has been alienated into the judgment rule that *products with defective labels are fake and substandard goods* in the field of criminal law, without the process of comprehensive judgment combined with the actual use performance of products, exposing the outstanding problem that *substantial harmfulness judgment is replaced by formal compliance review*. In fact, the quality standard system under administrative law cannot construct the unique evaluation dimension of criminal law. If the judgment of administrative law is directly used as the basis of criminal accountability without causing substantial harm, the essential elements of *social harm* required by criminal law are completely ignored. This excessive dependence on formal requirements leads to criminal justice becoming a simple extension of administrative law enforcement.

2) Mechanized operation of appraisal procedures

The current appraisal mechanism has the disadvantage of *replacing judicial review with administrative appraisal*. According to Item 1 of Notice on Appraisal Issues in the Trial of Criminal Cases of Manufacturing or Selling Fake and Substandard Goods and Article 1, Paragraph 5 of *Two-High Interpretation*, only when it is difficult to determine whether the producer or seller of products involved mixed products with inferior or adulterated products or passed off fake products as genuine ones, defective products as good ones, or substandard products as quality ones can it be entrusted to a product quality appraisal institution. However, in judicial practice, when entrusting product quality appraisal, the case-handling personnel usually directly use the appraisal results made by the administrative organ or the appraisal institution designated by it, and have not conducted substantive review on the appraisal method. This kind of appraisal mode that ignores the actual quality of products leads to the alienation of Article 140 of Criminal Law of the People's Republic of China into *Administrative Protection Law*, which seriously weakens the independent judgment function of criminal justice.

3) The absence of substantial harm judgment

There is a mindset of *presumption of harmful results* in judicial practice, and this judgment logic of *formal illegality means conviction* fundamentally conflicts with the principle of modesty of criminal law, which is essentially an improper connection between administrative illegality and criminal illegality. The lack of relevance review of consumers' rights and interests, that is, the judgment of substantive harm, stems from the misplacement of legal interests. Professor Z.X. Wang pointed out that the determination of criminal illegality must establish a *double relevance*: it must not only meet the formal requirements of administrative illegality, but also have the infringement of substantive legal interests.[6]

2.3.2. Confuse Administrative Violations with Criminal Offences.

1) Confusion of applicable standards of law

In judicial practice, there are significant differences between administrative organs and judicial organs in terms of legal provisions and protection of legal interests, but some judicial organs fail to accurately grasp the principle of independence of criminal law. According to Article 53 of Product Quality Law of the People's Republic of China, it is an administrative violation to forge the place of origin and falsely use the name and address of the factory, but the *fake and substandard goods* required by Article 140 of Criminal Law of the People's Republic of China must have substantial harmful characteristics. In legal practice, the judicial tendency of directly upgrading the administrative violation to a criminal offence, which is reflected by identifying the behavior of simply violating the product identification management regulations as a criminal offence, is essentially a typical manifestation of equating the *pre-law illegality* with the *criminal illegality*. This confusion of legal application standards stems from the mechanical understanding of the principle of unity of legal order. Some judicial personnel simply apply the theory of *administrative law used for qualitative and criminal law used for quantitative*, mistakenly believe that administrative illegality can directly deduce criminal illegality, ignoring the basic jurisprudence that criminal illegality needs independent judgment. This confusion leads to the improper expansion of the scope of criminal attack, and even leads to the contradictory conclusion that administrative determination is legal but criminal determination is illegal, which leads to internal conflicts in the legal system and seriously damages the unity of legal order. For example, in the *Refurbished Wheel Hub Case* handled by The Intermediate People's Court of Zhoukou City of Henan Province, the judicial organ entrusted an appraisal institution to appraise the refurbished wheel hub. The appraisal report indicated that the renovation wheel hub involved did not meet the national standards of this kind of products, and it was *fake and substandard goods* in the crime of manufacturing or selling fake and substandard goods. However, in this case, the staff of the county, city, province, State Administration of Market Supervision and Shanghai Xinxiang Product Quality Appraisal Center all said after on-the-spot inspection that the state has no clear quality and industry standards for the quality of refurbished wheels, and the relevant administrative departments are unable to conduct quality appraisal, and the sales of refurbished wheels are not regulated in administrative regulations.

2) Confusion of legal interest protection levels

In criminal judicial practice, there is a phenomenon of confusing administrative order with consumer rights protection. For example, in the above-mentioned *Refurbished Wheel Hub Case*, the judicial organ directly identified the refurbished products that meet the safety standards as *fake and substandard goods*, and its judgment was based only on the fact that the products were not marked with the refurbished logo, while ignoring the core elements that the actual performance of the products met the national standards. This kind of judgment thinking reflects some judicial personnel's misunderstanding of the protection benefits of Article 140 of Criminal Law of the People's Republic of China, and exposes two problems: First, the rank of legal norms is misplaced, or specifically speaking, the provisions on product identification in Article 27 of Product Quality Law of the People's Republic of China are directly upgraded to the evaluation standard of criminal law, ignoring the elements of *substantial defects* of products required by Article 140 of Criminal Law of the People's Republic of China; Second, the type of legal interest is misjudged, which equates the collective legal interest of administrative order with the personal legal interest of consumers, which violates the principle of proportionality. In fact, the core legal interest of this crime should be the personal and property rights of consumers, not the simple product management system. As Q. Fu pointed out, administrative law pays attention to formal compliance, while criminal law needs to examine substantive harmfulness, and there is a difference between them in quality rather than quantity.[7]

3) The practical dilemma of the linkage mechanism between administrative enforcement and criminal justice

Under the current legal framework, when an administrative organ transfers a case to a judicial organ, it often simply transfers the conclusion of administrative determination without transferring the important basis of the conclusion and the argumentation process, which has the structural defect that administrative determination dominates criminal judgment. Take the *Prepackaged Foods Label Case* handled by The Primary People's Court of Bincheng District of Binzhou City, Shandong Province as an example. After the market supervision department imposed an administrative penalty on the product because it was not labeled with additives, the procuratorial organ directly filed a public prosecution on this basis, and did not independently review the actual safety performance of the product. In practice, similar situations have caused procuratorial organs to not only reduce the direct motivation of substantive examination, but also bury the work of substantive examination. This mode of *administrative determination leading criminal judgment* makes it difficult to avoid the phenomenon of *inconsistent application of the law in similar cases*. Professor G.Q. Zhou emphasized that the principle of unity of legal order requires that the judgment of criminal illegality must be independent of the determination of administrative illegality, and the two should be *intersection* rather than *inclusion*.^[8]

2.4. The Perfect Path of the Identification Standard of Fake and Substandard Goods

To improve the identification standard of *fake and substandard goods*, it is necessary to construct a double-layer mechanism combining formal examination with substantive judgment, and adhere to criminal independence in the linkage between administrative enforcement and criminal justice. The preliminary screening is realized through the standardized formal examination, and the improper criminalization of administrative illegal acts is prevented by the substantive judgment of the relevance of legal interests, and finally a well-defined and unified legal application system is formed. This is not only the implementation of the principle of unity of legal order, but also the return of the orientation of criminal law protection law, which is helpful to realize the balance between combating crime and protecting market vitality.

2.4.1. Constructing a Double-layer Review Standard of Form and Essence

1) Standardized construction of formal review

As the first threshold to identify *fake and substandard goods*, formal examination should strictly follow the normative system of Product Quality Law of the People's Republic of China. According to Article 26 of the aforementioned law, the product quality should meet the three core requirements of protecting personal and property safety, conforming to express standards and having due performance. In judicial practice, formal examination should focus on the following dimensions: (1) Product identification integrity, including production license number, implementation standard code and other elements. According to Article 27 of the aforementioned law, product identification must truly and completely reflect product information, and any false labeling or lack of key information constitutes a formal defect; (2) Compliance of compulsory certification, which shall be reviewed in strict accordance with Administrative Regulations on Compulsory Product Certification, such as the qualification of products in the 3C certification catalogue. In the process of examination, it should be noted that the illegal use of certification marks may involve both administrative violations and criminal offences, which need to be distinguished and judged in combination with the subsequent substantive examination; (3) Compliance of key performance parameters. Taking building materials as an example, it is necessary to focus on the core parameters such as compressive strength and fire resistance limit. While in the field of food, it is necessary to detect indicators such as microbial content and additive usage. The review at this stage should strictly refer to the catalogue of national mandatory standards, and the recommended standards (GB/T class) should only be used as a reference rather than a mandatory basis. It should be emphasized that

the formal review must establish a dynamic updating mechanism, and timely follow up the National Standards Compilation and Revision Plan issued by the National Standardization Administration Committee every year to ensure that the review standards are synchronized with the latest technical specifications.

However, it must be noted that formal review only has the function of preliminary screening. As Z.X. Zhu pointed out, the current standardization law gives mandatory standards legal effect, but pure formal compliance cannot be equated with product qualification in the sense of criminal law.[9]

2) Judgment on the relevance of legal interests in substantive examination

The substantive examination should be based on the purpose of protecting the legal interests of criminal law, focusing on the deception and infringement of legal interests of products, which is the core mechanism to block *the direct transformation from administrative violations to criminal offences*. According to the legislative intent of Article 140 of Criminal Law of the People's Republic of China, the infringement of the legal interests of crimes of *fake and substandard goods* should be reflected in the destruction of the market economic order and the actual damage to consumers' rights and interests. According to the theory of the unity of legal order, the judgment of criminal illegality should be independent of administrative illegality, and we should focus on analyzing whether the product actually infringes on consumers' rights and interests. On the practical level, the substantive examination should build a *three-dimensional* evaluation model: (1) The safety risk dimension, in which the risk level of products is determined according to Consumer Goods Classification Guide, such as adopting the *zero tolerance* standard for high-risk products such as baby products and medical equipment, and evaluating the risk of defects in ordinary daily necessities in combination with specific use scenarios; (2) The dimension of fraud intensity, in which the intensity of deception is quantified through indicators such as price deviation (the ratio of actual selling price to genuine market price) and misleading propaganda (the proportion of false propaganda content); (3) The dimension of damage consequences, in which indirect damage such as the cost of rights protection (including testing costs and litigation costs) and the degree of market order damage (such as industry reputation damage) should also be taken into consideration, in addition to direct personal injury and property loss. This comprehensive evaluation mechanism, rather than one-sided judgment based on a single indicator, can accurately reflect the social harm of behavior.

2.4.2. Strengthening the Criminal Independence in the Linkage between Administrative Enforcement and Criminal Justice

1) Independent judgment rules of criminal illegality

As a safeguard law, criminal law needs to break through the bondage of administrative subordination in judging its illegality. The *double decoupling theory* put forward by Professor C.X. Ma emphasizes that the determination of criminal illegality should be decoupled from administrative illegality in form but linked to the infringement of legal interests in essence.[10] Specifically: (1) Products that only violate recommended standards (such as GB/T standards) should be excluded from criminal punishment if they do not cause real danger. For example, building materials products that fail to meet the energy-saving standards recommended by the industry but meet the safety indicators should be regulated by administrative means; (2) For innovative products (such as nano-materials, smart wearable devices), in the absence of national standards, an interdisciplinary expert committee should be organized to make a criminal penalty judgment based on industry consensus and risk probability assessment.

2) Criminal transformation mechanism of administrative evidence

The criminal transformation of *substandard goods* conclusions in administrative expert opinions must be substantially reviewed. When dealing with administrative expert opinions,

judicial organs should establish a *three- quality review* mechanism. That is, firstly, examine whether the qualifications of appraisal institutions are legal, and make clear that appraisal institutions have corresponding qualification certificates and other appraisal qualifications. Secondly, check whether the testing method is scientific, such as checking whether the sampling method meets the requirements of Interim Measures for the Administration of Product Quality Supervision and Spot Check. Finally, check whether the conclusion basis is sufficient, and verify the key links such as the standard timeliness of the inspection basis and the measurement and certification status of the testing equipment to ensure the criminal probative force of administrative evidence.

3) Step-by-step responsibility division mechanism

According to the degree of product defects, a differentiated responsibility system is constructed, and in the case of multiple mandatory standards at the same time, the standards implemented by product labeling are given priority; if the product is not marked with the implementation standard, the applicable standard shall be selected according to the general cognition of consumers. In practice, criminal responsibility is strictly applied to products with design defects (such as small parts of children's toys falling off easily), while for the problems such as identification defects (for example, the production date is not marked, but it has not actually expired), administrative punishment shall be given priority. This hierarchical processing mode not only conforms to the principle of modesty of criminal law, but also guides enterprises to establish a perfect quality internal control system.

3. Literature References

The writing of this paper is based on the systematic combing of existing legislation, judicial cases and academic research results. On the legislative level, it focuses on Article 140 of Criminal Law of the People's Republic of China and related judicial interpretations, and defines four legal types of *fake and substandard goods*. Administrative laws and regulations such as Product Quality Law of the People's Republic of China and Consumer Rights Protection Law of the People's Republic of China provide a normative basis for understanding *fake and substandard goods* in administrative law. On the theoretical level, M.K. Zhang, G.Q. Zhou, H.B. Chen and other scholars have conducted in-depth discussions on the substantive explanation and legal interest orientation of *fake and substandard goods*, which has provided important support for the construction of legal doctrine of this crime. H.B. Chen put forward that the legal interests of this crime should return to consumers' rights and interests, and opposed taking *system* or *order* as independent legal interests; G.Q. Zhou emphasized that the judgment of criminal illegality should be independent of administrative determination; C.X. Ma's *double decoupling theory* provides methodological guidance for criminal independence in the linkage between administrative enforcement and criminal justice. In the case study, this paper selects a series of typical referees, such as *Tongxiang Clothing with Substandard Ingredients*, *Shanghai Refurbishment Case of Second-hand Air Conditioning* and *Henan Refurbished Wheel Hub Case*, to reveal the formalization tendency and misreading of legal interests in judicial practice. These documents and cases together constitute the foundation of the problem consciousness and argumentation logic of this paper, and also provide theoretical support and empirical reference for improving the identification standard of *fake and substandard goods*.

4. Conclusion

The perfection of the identification standard of *fake and substandard goods* is essentially an important embodiment of the ability of market governance under the rule of law. By constructing the *double-level review standard* and strengthening the judgment of criminal independence, we can not only effectively punish the substantive harmful behavior, but also

avoid the excessive intervention of criminal means in the market economy. In the future, it is necessary to clarify the criteria for judging *substantial harm* in legislation, improve the mechanism for ascertaining technical facts in judicature, and build an inter-departmental collaborative governance system in law enforcement, so as to finally achieve a dynamic balance between product quality and safety and market innovation vitality.

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