



## Supreme People’s Court Issued Interpretation on Punitive Damages for Food and Drug Disputes

The Supreme People's Court (“**SPC**”) of the People's Republic of China (“**PRC**”) has recently promulgated the *Interpretation on Several Issues Concerning the Application of Law to the Trial of Cases of Disputes over Punitive Damages in Food and Drugs* (“**Interpretation**”), taking effect from August 22, 2024. The Interpretation has 19 articles in total covering various aspects regarding punitive damages related to food and drug as prescribed in related laws. This newsletter will focus on punitive damages in the food sector only.

The history of punitive damages in the food sector in China began with the introduction of punitive damages in Article 49 of the *Law on the Protection of Rights and Interests of Consumers* in 1993. Currently, the punitive damages regarding food could be found in the following provisions:

<b>Punitive Damages</b>	<b>Legal Provisions</b>
<ul style="list-style-type: none"><li>- 3 times the price of goods/services purchased due to fraud, with a lower limit of RMB 500; and</li><li>- In case of death or serious personal injury: two times the loss<sup>1</sup> for knowingly providing defective goods/services.</li></ul>	Paras 1 and 2, Article 55, Article 49 and Article 51 of <i>Law on the Protection of Rights and Interests of Consumers of 2013</i>
10 times the price of food purchased or three times the loss suffered, for producing or knowingly selling food that do not meet food safety standards, with a lower limit of RMB 1,000	Para 2, Article 148, <i>Food Safety Law of 2021</i>

Additionally, in 2020, the SPC issued the *Interpretation on Several Issues concerning the Application of Law in Hearing Cases Involving Civil Disputes over Food Safety (I)*, in order to clarify issues of fraud, food safety standards and labels associated with punitive damages.

Despite the legal basis in the above laws, some long-standing questions regarding punitive damages remain unclear. For example, (1) whether counterfeit hunters and purchasers aware of counterfeit but buy anyway (“**knowingly-buy-fake consumption**”) can claim punitive damages and if so, how to determine the actual amount of punitive damages, (2) how to determine whether there is defect in food label and

instructions for use, etc. Against the above background, the Interpretation aims to provide clearer guidance.

## **1. Clarification of daily consumption needs**

In November 2023, the SPC issued four typical cases which specified the rule of supporting punitive damages within reasonable daily consumption needs. However, it has been clearly established whether such principle applies to those counterfeit hunters (i.e., he/she knowingly buys food that fails to meet food safety standards) or all consumers.

The Interpretation has unified the ruling standards that the principle of "reasonable daily consumption needs" should apply in the purchasing activities of all consumers in determining the scope of punitive damages. The Interpretation provides that courts can consider shelf life, common consumption needs of ordinary consumers etc. to determine the actual quantity of goods for reasonable daily consumption needs. Such burden of proof that a consumer is a counterfeit hunter shall be borne by the manufacturer or operator.

For frequent knowingly-buy-fake consumptions within a short term, the Interpretation makes the following distinction:

- If a consumer claims for punitive damages respectively for multiple batches of product in one lawsuit, the quantity shall be assessed based on the total number of the same food item in multiple purchases, instead of respective number of each batch. The people's court will support the claim within the scope of reasonable daily consumption needs;
- If a consumer files multiple lawsuits for all these products, the people's court may consider the shelf life, common consumption needs of ordinary consumers, purchase frequency, etc., to determine whether the quantity in each lawsuit exceeds the reasonable daily consumption needs.

The Interpretation shows its intention to restrain malicious claims of high amount or continuous or repetitive claims for punitive damages.

For the determination of ten-fold punitive damages, in the absence of evidence that a consumer was aware of the non-compliance of food safety issue, the damages shall be calculated based on the actual purchase price.

## **2. Non-compliance of food**

### **a) Failure to meet food safety standards**

Within the scope of "personal or family daily consumption needs", the Interpretation generally supports punitive damage claims against food producers or sellers (including small food production and processing workshops and food vendors) that do not meet food safety standards.

Food safety standards refer to the mandatory standards as defined under the *Food Safety Law*. In practice, there are opinions that certain food may still be safe even it does not meet food safety standards, however it is difficult to ascertain whether such food will have a sub-acute or chronic harm to human health. Therefore, the Interpretation adopts the criteria of failing to meet food safety standards.

### **b) Other non-compliance**

Punitive damages are also applicable to the food that are not compliant with the requirements regarding:

- the maximum limits of substances harmful to human health in food;

- the types, usage range, and dosage of food additives;
- nutritional requirements for staple and supplementary food for specific population;
- labeling, marking, and instruction manual related to food safety in terms of hygiene and nutrition; and
- quality requirements related to food safety standards.

c) Non-compliant or defective food labeling and instructions

Whether non-compliant food labeling and instructions should be subject to punitive damages has always been a heated topic in practice. According to Article 125 of the *Food Safety Law*, defective food labeling or instruction will not be subject to punitive damages. Since *the Interpretation on Several Issues concerning the Application of Law in Hearing Cases Involving Civil Disputes over Food Safety (I)*, the SPC has made it clear that prepackaged food not marked with the producer's name, address, composition or list of ingredients, or not clearly marked with the date of production or shelf life can lead to punitive damages, which means such Non-compliance issues will not be construed as merely the "defective food labeling or instruction" as stipulated in the *Food Safety Law*. The Interpretation further provides for an exception to punitive damages. I.e., punitive damages are not applicable to food labels and instructions with defects that (1) do not affect food safety, and (2) do not mislead consumers.

The Interpretation clarifies that the "food safety" here shall be determined based on the definition as stipulated by the *Food Safety Law* (i.e., the food is non-toxic, non-hazardous, meets the nutritional requirements that it should have, and does not pose any acute, sub-acute or chronic hazards to human health) and the term "mislead" shall be assessed taking into account factors including whether the consumer is aware of the defects, and whether the defects can lead to misconceptions about food safety among ordinary consumers.

For instance, the followings are considered as minor defects regarding food labels and instructions, taking into consideration references in the *Food Production and Operation Supervision and Inspection Management Measures*:

- the font size, font style, or character height of words, symbols, or numbers is non-standard, or the font size or character height of foreign languages is larger than that of the Chinese;
- misspellings, extra characters, missing characters, traditional Chinese characters, or inaccurate foreign language translations occur, but they will not lead consumers to misunderstand the food's safety;
- the labeling method and format for net content and specifications are non-standard, or the use of colloquial or abbreviated names for food, food additives, and ingredients is non-standard, or the order, values, and unit labeling of the nutrition facts table and ingredient list are non-standard, or the rounding interval, "0" limit value, and labeling unit of the nutrition facts table are non-standard, but they will not lead consumers to misunderstand the food's safety.

The Interpretation listed the followings that are not considered as merely defect that will not have impact on food safety and will not be misleading to consumers: (1) there is failure to indicate mandatory content required by food safety standards to be indicated, except for minor defects; (2) the mandatory content<sup>ii</sup> is intentionally mislabeled, or (3) the mandatory content is so incorrect that could result in the consumers' misunderstanding of food safety. It should be noted that as long as the mandatory content is intentionally mislabeled, such wrong labeled food shall be subject to punitive damages, no matter whether such mislabeling activities have a major impact. This is because the acts of intentional mislabeling imply obvious faults, and thus should be held liable.

### 3. Application rules for different punitive damages mechanisms

As above mentioned, the punitive damages of three times the price of goods/services purchased when there is act of fraud are stipulated in the *Law on the Protection of Rights and Interests of Consumers*.

Article 9 of the Interpretation has clarified that consumers are entitled to choose to claim for punitive damages of either ten times the price of food purchased under the *Food Safety Law* or three times the loss suffered under the *Law on the Protection of Rights and Interests of Consumers*.

If, during litigation process, the people's court holds that consumer's claim under the *Food Safety Law* is not established but the operator's conduct constitutes fraud, the consumer can change its claim to demand the operator to bear punitive damages liability in accordance with the *Law on the Protection of Rights and Interests of Consumers*.

### 4. Conclusion

The Interpretation is a detailed regulation to support punitive damages within the scope of reasonable daily consumption needs, tending to find a balance between the legitimate rights and interests of consumers and those of manufacturers and operators against counterfeit hunters.

The Interpretation adopts the principle of "fault compatible with punishment" in addition to the consumers' rights protection, which regulates claims of high amount for punitive damages and protects the normal manufacturing and operation.

For those enterprises who are engaged in food sector, the Interpretation offers detailed provisions on the commonly seen issues, especially labeling and instruction issues of food products. Some of the non-compliance of food labeling and instruction will be deemed as merely defects that will not lead to punitive damages while others cannot be exempted from punitive damages.

Foreign enterprises as well as their Chinese subsidiaries in food sector shall make careful check during their manufacturing and operation in relation to the food labeling and instruction.

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<sup>i</sup> The afore-mentioned losses include medical expenses, nursing expenses etc. for treatment and recovery, expenses on self-help devices and living allowances in case of disability, funeral expenses and pay compensations for death of the victims, and applicable compensation for mental damages.

<sup>ii</sup> Mandatory content refers to those items listed in Article 67 of the *Food Safety Law*, including name, specification, net weight, content or ingredient table, name, address and contact information of the producer, storage conditions, etc.