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The (re)Birth of the Consumer Activist in China:
The “Wang Hai Phenomenon” in the Light of Guiding Case No. 23

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Guiding Case No. 23 (“GC23”), SUN Yinshan v. Nanjing Auchan Hypermarket Co., Ltd. Jiangning Store, A Sale and Purchase Contract Dispute, was released on January 26, 2014 as part of the sixth batch of guiding cases (“GCs”) released by China’s Supreme People’s Court (“SPC”). Although the primary legislation cited in this GC is the Food Safety Law of the People’s Republic of China (“Food Safety Law”), the key question at the heart of the case is: who is a “consumer”? The legal definition of a “consumer” in Chinese law derives from Article 2 of the Law of the People’s Republic of China on Protection of Consumer Rights and Interests (“Consumer Protection Law”), which limits the designation to people who purchase commodities or services for the purpose of meeting the consumption needs of daily life.

If a person knowingly purchases substandard (in this case, expired) goods with the sole purpose of returning them in order to claim compensation, should he still be classed as a “consumer”? In other words, should such a “consumer activist” fall under the same legal definition as everyday consumers? This thorny issue was debated in Chinese legal circles in the mid to late 1990s, but appeared to have been resolved. With the release of GC23, the SPC appears to be both reigniting the debate and boosting the potential role for consumer activists in the Chinese legal system. This Commentary will show that, in the context of China, the definition of “consumer” is not merely a legal question, but a political one with broad social implications.

I. Empowering the Consumer Activist: Guiding Case No. 23

On May 1, 2012, plaintiff Sun Yinshan purchased 15 packs of Yutu-brand sausages from the defendant supermarket. The quality assurance period of 14 of the packs of sausages had already expired, so after paying for the sausages at the cashier, the plaintiff went straight to the customer service desk to claim compensation. The damages claimed by the plaintiff amounted to RMB 5,586, which was ten times the total price for the 14 expired packs of sausages (RMB 558.6).

The legal basis for the plaintiff’s claim was Article 96, Paragraph 2 of the Food Safety Law, which states:

Where [an entity] produces food that does not conform to food safety standards or sells food that [the entity] knows does not conform to food safety standards, the


4 The original Guiding Case uses the term “保质期”, which is defined by law as “the period of time during which pre-packaged food subjected to the storage conditions specified on the label can maintain its quality”. Food Safety Law, Art. 99 (translation from EGC23, supra note 1).
consumer, in addition to demanding compensation for losses, can also demand that the producer or seller pay damages ten times the price [of the food].

The defendant, however, argued that the behavior of the plaintiff placed him outside the definition of a “consumer” provided in Article 2 of the Consumer Protection Law. As plaintiff Sun Yinshan’s sole purpose in buying the sausages was to claim compensation by exploiting the punitive damages provision in the Food Safety Law, he clearly did not purchase the sausages for daily consumption purposes and could thus not be a “consumer” under Article 2 of the Consumer Protection Law. Nevertheless, on September 10, 2012, the Jiangning District People’s Court in Nanjing Municipality, Jiangsu Province, found in favor of the plaintiff and ordered the defendant to pay the demanded compensation of RMB 5,586.

According to GC23, the reasons for the adjudication were as follows:

The concept of “consumer” is relative to [the concepts of] “seller” and “producer”. As long as the commodity purchased and used or the service received through a market transaction is for the purpose of [meeting] the needs of individual and family life, rather than for the purpose of [meeting] the needs of either production and business activities or occupational activities, [the buyer] should be recognized as a consumer [who buys the commodity or service] “for the purpose of [meeting] the consumption needs of [daily] life” and [should] thereby fall within the regulatory scope of the law on protection of consumer rights and interests. In this case, neither the plaintiff nor the defendant had any objections concerning the fact that SUN Yinshan bought sausages from Auchan Hypermarket Jiangning Store. Thus, it could be determined that SUN Yinshan carried out an act of purchasing commodities. SUN Yinshan did not use the purchased sausages for any resale business. Neither did Auchan Hypermarket Jiangning Store provide evidence to prove that [SUN Yinshan] purchased commodities for production and business. SUN Yinshan’s claim for compensation, arising from his purchase of food whose quality assurance period had already expired, was an exercise of a legal right. Therefore, Auchan Hypermarket Jiangning Store’s defense, claiming that SUN Yinshan was not a consumer [because he purposefully] “bought fake [commodities] to claim compensation”, could not stand.

A careful reading of these reasons suggests that the burden of proof to show the claimant is not a “consumer” under Article 2 of the Consumer Protection Law falls on the defendant. In this case, as defendant Auchan Hypermarket could not prove that the plaintiff purchased the goods for 

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5. Food Safety Law, Art. 96 (translation from EGC23, supra note 1).
6. Masculine pronouns are used to refer to the plaintiff because the name Sun Yinshan is more commonly found among males.
7. The term “消费者权益保护法” (“law on protection of consumer rights and interests”) likely refers to 《中华人民共和国消费者权益保护法》 (Law of the People’s Republic of China on the Protection of Consumer Rights and Interests).
8. Translation from EGC23, supra note 1.

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production or business purposes, it could not prove that he fell outside the definition of a “consumer” and its defense failed.

It would seem from the reasons given that a primary motivation for denying Auchan Hypermarket’s defense was a desire to avoid examining the subjective motives of individuals. Indeed, it would be a virtually impossible task to objectively establish an individual’s motives in making specific purchases of goods or services. By forcing the defendant to prove that the plaintiff falls outside of the definition provided in Article 2 of the Consumer Protection Law, the court is sending a clear message that it is easing the burden on claimants in bringing suit under the Consumer Protection Law and associated legislation such as the Food Safety Law and the Tort Law of the People’s Republic of China, which both use the same definition of “consumer”.

By adopting this case as a GC, the SPC is further signaling that the interests consumer activists have, even if they knowingly purchase fake or expired commodities expressly to exploit compensation provisions, are legitimate interests protected by the consumer protection framework of laws and regulations. As such, the decision reached in this case has stimulated further discussion regarding the legal principle settled more than a decade earlier at the peak of the trend dubbed the “Wang Hai phenomenon”.

II. The “Wang Hai Phenomenon” and Related Debate

Wang Hai is a famous consumer advocate who shot to prominence in the mid-1990s for his use of the “double compensation” provision of the Consumer Protection Law, which provided that compensation amounting to twice the price of the commodity or the fee of the service should be paid to a consumer who purchased deceptive (fake) products. In 1995, Wang Hai purchased a pair of Sony-brand headphones from a Beijing market. After confirming with the Sony office in Beijing that the headphones were fake, he returned to the bazaar and bought 10 more pairs. He then demanded that the retailer pay him double the price of the headphones under the “double compensation” provision of the Consumer Protection Law. The seller agreed to compensate him. At that time, the Consumer Protection Law was relatively new and untested, but in the following couple of years, Wang Hai repeated the exercise with several other suppliers of fake products and gained not only thousands of yuan in compensation, but also a following in the media.

Wang Hai was initially hailed as something of a hero for taking on suppliers of clearly defective or fake commodities. His consumer activism also won the tacit approval of the

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11 See Article 49 of the Consumer Protection Law prior to its amendment on October 25, 2013; the current provision, in Article 55, provides for compensation up to three times the price of the commodity or the fee for the service.

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government; he was seen to be demonstrating China’s commitment to protecting intellectual property rights at a time when its accession to the World Trade Organization was still under debate. In addition, activists such as Wang Hai were seen as helping to develop the fledgling NGO sector in China, easing the pressure on the state as the primary provider of services and support to consumer citizens.

Nevertheless, by 2000, as Wang Hai’s celebrity status continued to grow, he began to be accused of merely “cashing in” on the business of consumer rights; for example, a national television program which aired in March of 2000 was heavily critical of both his lifestyle and his motives. This unease in the media about Wang Hai’s role as a consumer advocate was also reflected in the academic literature, with some commentators holding him up as a role model and others vilifying him.

Those who vilify Wang Hai refer to Article 2 of the Consumer Protection Law, which defines a consumer as someone who “purchases and uses commodities or receives services for daily consumption”. These critics suggest that by cynically using the punitive damages provisions of the law to amass large amounts of compensation, activists such as Wang Hai are not purchasing and using commodities for daily consumption. Consequently, such activists could be seen to be flouting the purpose of the Consumer Protection Law. According to this argument, Wang Hai would fall outside of the definition provided in Article 2 and therefore would be ineligible to bring a claim under the law.

On the other hand, some commentators have argued in defense of Wang Hai. Their reasoning is based on the main purpose of the Consumer Protection Law of promoting consumers’ rights and interests. In other words, individual consumers should be encouraged to assert their consumer rights, including through the use of private enforcement mechanisms. Thus, the courts should not construe the definition of “consumer” strictly, but rather should apply a more flexible interpretation to allow the legislation to fulfill its objective of increasing the rights and interests of consumers. This viewpoint is also supported by Beverley Hooper, who writes that in China, “rights consciousness in the area of consumer rights is being promoted and facilitated by the state, essentially in the interests of its reform agenda.” Specifically, the state is encouraging individual

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17 Hooper, supra note 14, at 2 (emphasis in original).
enforcement of consumer rights in order to tackle deficiencies in the market and to improve the quality of Chinese goods and services. According to this perspective, as the courts’ interests are virtually indistinguishable from the state’s agenda, the courts should encourage consumers to assert their rights against the market rather than against the state.

III. Defining the “Consumer”

The debate discussed above illustrates that applying the definition of a “consumer” to professional consumer advocates remains extremely problematic. China is not unique in struggling to find a coherent definition of a consumer for the purposes of consumer protection law. However, the specific issue of how to define a “consumer” is inextricably linked to the ready availability of compensation. Clearly, if punitive damages were not easily accessible and thus the only recompense to consumers was the return of the purchase price, then consumer activists would lose their motivation to purchase defective or expired goods in bulk and immediately return them.

Nonetheless, China’s difficulties in defining consumers are mirrored in many other jurisdictions around the world. For example, in the UK, the current legislation relating to consumer protection is to be found in several overlapping Acts of Parliament, each of which contains its own definition of “consumer”. The definitions all require that the party seeking to qualify as a consumer must not be acting in the course of his or her business, but differences can be found based on whether the legislation originated in EU law or not.

The main difference relates to whether only a natural person can be a “consumer” or whether any legal person, such as a business organization, could potentially fall within the definition. The proposed Consumer Rights Bill currently going through Parliament in the UK would consolidate the existing legislation and also clarify the definition of a consumer. Once the Bill is passed, the definition of a consumer would be limited to natural persons acting wholly or mainly outside their trade, business, craft, or profession.

Applying this proposed UK definition to the Chinese consumer activists, it could be argued that they would fall outside this definition if strictly construed, as they would be acting wholly or mainly within their profession by utilizing the consumer protection laws to receive financial recompense. In other words, if activists could be described as professionals occupied in the fight against shoddy or defective goods, purchasing goods solely in order to return them and claim compensation, then they could not be classed as “consumers” in that context, as they would arguably be performing their job.

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IV. China’s Choice

The proposed UK definition of “consumer” seems to be a sound approach to discourage consumer activists from exploiting the consumer protection laws. Would China take this step? The release of GC23 suggests that the answer to this question is negative. By making it difficult for the defendant to prove that an individual falls outside of the definition of a “consumer”, the court has sent a clear message that actions brought by individual consumers are to be encouraged, even if those “consumers” are actually professional consumer activists.

Nevertheless, at the news conference, held on January 9, 2014 (approximately two weeks before the release of GC23), in which the SPC released the Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Handling of Cases Involving Food and Drug Disputes, a judge of the SPC commented that “professional fighting against fakes” was a “double edged sword”. Zhang Yongjian, Chief Judge of the First Civil Division of the SPC, stated, without offering a full explanation, that although such actions can serve as a constraint on rogue or counterfeit suppliers, they may also cause moral hazards or market disorder. Judge Zhang indicated that these issues are still being studied and no conclusion has yet been reached.

Judge Zhang’s comments could support an expectation that China might adopt a narrower definition of “consumer”. While this is certainly possible, it is unlikely to happen in the near future. In fact, an amendment to the Consumer Protection Law adopted in October 2013 came into effect on March 15, 2014. The amended law is arguably designed to strengthen the legal protection available for consumer rights, to stimulate public awareness of consumer rights, and to send a message to rogue producers and business operators that the law will no longer protect them if they sell substandard products.

The amendment of the Consumer Protection Law and the selection of GC23 show that consumer concerns expressed in the media, particularly relating to food safety and environmental damage, are being taken very seriously by Chinese leaders. At a time when Chinese leaders are keen on sustaining the governance of the ruling communist party, they are unlikely to adopt a narrow definition of “consumer” that might be seen as undermining the interests of the people and, thereby, social stability, if dissatisfied consumers choose to protest. To Chinese leaders, the people may not always be right, but the consumers are.

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