

## **“Being Affluent, One Drinks Wine”: Wine Counterfeiting in Mainland China**

### **Introduction**

In the existing literature, counterfeiting activities are often presented in the category of intellectual property (IP) crimes, of which the legal basis is in the law concerning the protection of IPRs. Typically, counterfeit goods are films and sound recording, computer software, designer clothing, shoes and fashion accessories (Norman 2014). For ordinary consumers, counterfeiting – often associated with imitating luxury brands – seems to link with the fashion business and the middle-class lifestyle, and the word ‘counterfeiting’ is somehow glamorised. In fact, counterfeiting is an industry that is driven by market demand and profits and counterfeit goods can be ‘anything and everything’ (Antonopoulos et al. 2017). Despite an increase of academic inquiries into product counterfeiting in recent years, there is still a need to develop a broader and deeper understanding of the nature of the illicit trade, due to the complexity that it is evolving.

Counterfeiting literature embraces a wide range of themes, in which IPR infringements are often centred. Consequently, economic losses of IPR owners, losses of state tax revenue and job losses as a result of the flow of ‘fake goods’, are used as measures to assess the cost of counterfeiting to local, regional and global economy. Accordingly, it is concluded that the counterfeiting trade have a considerable economic impact and therefore warrants official attention (e.g. UNODC 2014). Past research has also suggested links between counterfeiting and organised crime (e.g. HMSO 2006; Lowe 2006; Reynolds and McKee 2010; Satchwell 2004; Treverton et al. 2009). An earlier concern with ‘general criminological indifference’ to IP crimes (see Anderson 1999; Yar 2005) may no longer sustain. On the other hand, commodity counterfeiting is not a top priority of law enforcement agencies, if we consider that it is not named by Lynne Owens – Director General of the National Crime Agency – under any of the three crime fighting priority headings: vulnerability, prosperity and commodity (see NCA

2017). This is perhaps because of other competing threats (e.g. the sexual exploitation of children, firearms smuggling, cybercrime, human trafficking and modern slavery). Possibly, it is also because product counterfeiting has traditionally been perceived as ‘victimless’ (see critiques in Anderson 1999; Yar 2005). The fact is that counterfeiting is a broad and complicated problem: apart from IPR violation, it may pose acute threats to public health and safety. The nature, organisational characteristics and potential harm of the trade in dangerous counterfeit goods need thorough investigation to gain fuller appreciation.

This article focuses on one type of dangerous counterfeit goods – fake wines. It uses the wine counterfeiting trade in China as a single case study to discuss three important themes in relation to product counterfeiting: (1) the definition of counterfeiting; (2) the scope, scale and the social, operational and financial organisation of the counterfeit business; and (3) the policing of counterfeit goods – an important subject matter for academic research (Wall and Large 2010). The aim of this article is to broaden our knowledge about the counterfeiting business, develop a clear understanding of the illegitimate market, and help to renew and advance countermeasures that enable to exercise tight control over the counterfeiting industry and disrupt the behaviours of counterfeiters.

### **The definitional issue of counterfeiting**

As indicated earlier, IP law provides the legal basis for prohibiting counterfeiting activities. While there is little agreement on its precise coverage (Bently and Sherman 2014), ‘intellectual property’ usually refers to a bundle of rights that protects applications of ideas and information which have commercial value (Cornish, Llewelyn and Aplin 2013). Thus, IP law covers a number of areas of law, including copyright law, patent law and trademark law. Counterfeiting commonly refers to acts which involve infringement of others’ IPRs. It is not a legal term, but frequently used both legal and lay contexts (Yar 2005).

While counterfeiting is not defined in the law, legal definition for ‘counterfeit goods’ is available. The ‘Border Measures Regulation’ (EU Regulation No. 608/2013 concerning customs enforcement of IPRs), for example, provides the definition of ‘pirated’ or ‘counterfeit’ goods under Article 2(5) and (6): handling ‘counterfeit goods’ infringes trademarks, whilst dealing with ‘pirated goods’ involves infringements of copyright, related rights and design rights. Thus, IP infringement covers piracy and counterfeiting. In practice, however, infringement of some of the IPRs can be described as counterfeiting *or* piracy (Bainbridge 2012). Often, ‘pirated’ and ‘counterfeit’ goods, and ‘counterfeiting’ and ‘product piracy’ are interchangeably used (e.g. Norman 2014; OECD 2016).

Lin (2011) explained counterfeiting by dividing it into three types of infringements: first, the unauthorised use of a brand name or trademark; second, the use of names, designs and logos that intentionally resemble a brand; and third, the unauthorised sale of legitimately produced brand name goods – clearly, IP law is the basis of this classification. In fact, it is now accepted that counterfeiting causes harms beyond IPR infringements, and it should be clamped down to not only protect legitimate traders’ economic interests, but also prevent society from being deceived into buying substandard goods and, more importantly, to protect individual consumers from dangerous fake goods (Bainbridge 2012; HMSO 2006).

This view has received formal recognition in some jurisdictions. In English law, for example, certain IP crimes are designated as serious offences under the *Serious Crimes Act* 2007 to address the seriousness of those IP violations, prevent the trade in counterfeit goods that endangers public health and safety, and punish those who are engaged in the illegitimate business. In China, product counterfeiting gives rise to the breach of a variety of substantive laws, including the trademark law, consumer protection law as well as criminal law.

Under the *Chinese Criminal Law*, product counterfeiting may primarily constitute two types of offences. One is the unlawful use of others’ registered trademarks (Sections 213-215),

and the other is the production of counterfeit (*jia-mao*) and/or substandard (*wei-lie*) products (Sections 140, 143). The latter category concerns public health and safety, for which the maximum penalty is a life sentence, whilst the second category outlaws counterfeiting trademarks, of which an offence is punishable by up to seven years imprisonment. In the existing law, the sale of counterfeit goods is also a criminal offence if a person has sold or offered counterfeit goods that exceed 50,000 yuan (about £5,700) (Section 149). Furthermore, if the fake and substandard products concerned are toxic and have led to deaths or serious personal injuries, the death penalty is available (Section 144). In cases concerning counterfeit foods and beverages, the *Food Safety Law 2009* (FSL 2009) is usually triggered. It aims to strengthen food safety in China (Section 2) and bar bad practices in the food production chains (Section 28). Shu and Li (2014) point out that the law provides substances to the matching criminal law provisions.

Chinese law appears to proclaim that wine counterfeiting amounts to not only IPR infringements but also a serious crime, which undermines the socialist market economic order and endangers public safety and health. In a similar vein, wine counterfeiting may amount to ‘food fraud’. According to the UK’s Food Standards Agency (2016), food fraud is ‘a dishonest act or omission, relating to the production or supply of food, which is intended for personal gain or to cause loss to another party’. Therefore, wine counterfeiting may overlap with concepts such as ‘food fraud’ and ‘food crime’ in the field of research focusing on criminality and integrity in food supply chains (see e.g. Elliott 2014; Fassam and Dani 2017; Olmsted 2016; see more articles about the subject in *British Food Journal*).

In order not to complicate the definitional issue (which remains unsettled), and to be in line with recent counterfeiting research into illegitimate alcohol (see e.g. Lecat et al. 2017; Lord et al. 2017; Shen and Antonopoulos 2016; Vandagraf 2015), this study discusses wine counterfeiting in the broad context of organised crime research. However, I will return to

provide an extended working definition of counterfeiting by adding some behaviours in food (wine) fraud in the conclusion.

### **The scope, scale and process of the fake wine business in China**

The wine market has been rapidly growing in China since the mid-1990s. The number of wine manufacturers was around 130 in 1994, but reached to more than 600 in the beginning of the new millennium (Zhong 2002). Initially, wines were consumed mainly by urban youths and the middle-aged and high-salaried professionals in first- and second-tier cities in the developed coastal regions. In the 1990s, there was a popular saying: ‘Being *wen-bao* (having adequate food and clothing) one drinks liquor; being *xiao-kang* (fairly well-off), one drinks beer; and being *fu-yu* (affluent), one drinks wine (Liu 1998). Gradually, the wine market has expanded to third-tier cities and some rural areas (Li et al. 2007). Now, the wine market is ‘booming’ (Byrnes 2013) and accordingly, the wine industry is ‘thriving’ (*Global Legal Post* 2015).

In the Chinese wine market, imported wines are increasingly gaining popularity. In the mid-1990s, foreign wines started to flood into China, mainly from France, Italy, Spain, Hungary, Portugal and Australia. Today, it was estimated that Europe exported nearly one billion US dollar worth of wine to China (Byrnes 2013), and imports represented more than 30 per cent of 1.9 billion bottles of wine sold annually in mainland China and Hong Kong (Huang 2012; Zhang et al. 2013). Unsurprisingly, the wine counterfeiting business is flourishing.

In the 1990s, copies were discovered of the top three branded Chinese wines – *Zhangyu*, the Great Wall and Dynasty – as well as some top-end foreign wine brands (Huang 2012). It was revealed that just under 50,000 bottles of *Lafite* were imported to China annually, but around two million bottles of ‘*Lafite* wine’ were sold (Zhang et al. 2013) – a counterfeiting phenomenon that is not unusual in the global wine market (Lecat et al. 2017).

Due to its clandestine nature, it is hard to gauge the scale of the wine counterfeiting business. Official statistics are unavailable. According to one journalistic account, 30 per cent of all alcohol in China was counterfeit, and probably 70 per cent of wines were fake (Shen and Antonopoulos 2016). An earlier estimate suggested that counterfeits took 57 per cent of the total amount of wine (400,000 tons) sold in the country annually (Wu and Wang 2002). Bartman (2013) observed that possibly over 70 per cent of the wines in China were not original – in other words, copies. French wines seem to be particularly targeted: one source suggested that one out of every two bottles of top-brand French wine sold in China was fake (*Dinner Party Downloads* 2015); for another, there was at least one counterfeit for every one authentic (Wine Spectator 2015).

It should be noted that these figures are rough estimates and ‘impressionistic’ (Yar 2005) which are not true reflections of the scope and scale of the wine counterfeiting business, but they seem to be consistent with the anecdotal evidence. For example, in a popular TV series – *Let’s Get Married* – a bottle of fake *Lafite* was presented as genuine (*Sina News* 2013). Together, these figures and illustrations indicate a significant economic market of illegitimate wines, about which we still have no comprehensive knowledge. Lecat et al. (2017: 96) argue that ‘the key issue in the fighting against counterfeiting is to have a broad awareness of the whole supply chain in the wine industry’. I add that to identify the organisational characteristics of the wine counterfeiting industry and the everyday activities of counterfeiters is also salient. In this study, this is to be done by examining the wine counterfeiting process.

#### *The process of wine counterfeiting*

Generally speaking, the counterfeiting process primarily consists of manufacturing (including labelling and packaging), importation-exportation (if applicable), internal transport and

distribution (including sales) (see e.g. Shen et al. 2010). Wine counterfeiting is no exception. Several stages in the wine counterfeiting process are worth noting.

### 1. Manufacture

The choice of methods for manufacturing counterfeit goods is determined by a number of factors, including the level of start-up capital, expected quality of the fakes, availability of product knowledge, skills and technology, and costs. Existing data suggests that in wine counterfeiting, *refilling* of genuine empty bottles of high-end brands is a common method. It is cheap, does not require any special skills and can be done manually. This method involves reuse of recycled original bottles, to which usually genuine labels are still attached. Needless to say, using original bottles makes it easy to deceive innocent consumers. Relatedly, there was an ‘extraordinary demand’ for empty bottles of famous wines (Taylor 2016; Vandagraf 2015) and this explains why a buyer in *Beijing* paid 2,900 yuan (about £330) for a used bottle of *Lafite Rothschild* (*Telegraph* 2011).

*Re-labelling* is another common method which involves replicating bottles or labels of the genuine, usually cheap, brands. For example, to replace the label on the bottle of *Charles Shaw* with that of *Castel* in order to sell the fake *Castel* at a high price. In a police raid in *Jiangsu*, investigators saw several individuals washing off the original labels on the imported cheap wines at the premises of an international trading company, where the counterfeit labels of top-end foreign wine brands were also discovered (Editorial 2012).

Furthermore, *labelling* is also frequently used in the fake wine production. In the counterfeiting industry, *bai-ban* (literally ‘blank board’, meaning unbranded and unlabelled products) are often produced. They are subsequently ‘branded’ with counterfeit labels of genuine brands according to order or demand (Guo 2002; Ye 2000). CCTV (2010) – China’s state television channel – reported that realistic fake labels and other packaging materials (e.g.

certificates of product origin, year of production and quality verification) were widely available in the black market (see also Fu et al. 2017).

It appears that compared with that in traditional wine production countries, faking labels and packaging materials is much easier in China because the majority of the Chinese – consumers as well as counterfeiters – do not have much wine knowledge, nor do they know much English and any other foreign language (Yi 2011). People typically have no idea how the authentic looks like. Consequently, even obvious spelling mistakes and other erroneous details on the labels and packaging may not unveil the true identity of fakes. For the same reason, counterfeiters may simply make up brand names to label their fakes (Sun and Yao 2004) – such behaviour does not usually violate others' IPRs. Boyce (2012) observed that often, wine counterfeiters use invented brand names and addresses relating to places abroad to claim a foreign appellation of wines which are in fact made in China. Consumers' lack of wine knowledge has been taken advantage of by local counterfeiters as well as those overseas: along with legitimate European wine exporters, counterfeiters are increasingly cashing in to occupy China's flourishing wine markets (Byrnes 2013).

Product counterfeiting is clearly profit-driven. It should be noted that whichever methods are used, for counterfeiters, what matters is profitability. Existing data shows that while fake wines may be of high quality and that professionally imitated fakes are hard to distinguish from the genuine, more typically fakes are made of poor quality or diluted wine and sold as if they are genuine products of which they are copies (Editorial 2012). Counterfeit wines may be made of a mixture of water, wine juice or edible alcohol, colourant, fragrant essences and other chemical ingredients including thickening agent and preservative (Wang 2013) which are essentially false wines. In the worst case, the chemical ingredients used are health threatening (Editorial 2009). Frequent consumption of poor quality or false wines potentially leads to long term health consequences, adulteration and even personal injuries.



## 2. Exportation-Importation

Imported wines are preferred to domestic products in China (*Zhejiang Daily* 2012). As a result, wines with a foreign label are usually tagged at a good price and sold well. Thus, foreign wines are frequently counterfeited. Counterfeit foreign wines may be *imported fakes from overseas* as well as *locally produced 'imports'*.

Some fake wines are made overseas for the illegitimate wine market in China. They can be ready-made fakes, bottled – often unlabelled – low-end wines and cheap unbranded bulk wines. While the quality of imported wines varies, usually substandard products, known as *yang-la-ji* (foreign garbage) (Wang 2013; Zhong 2002; Zhu 2003), are shipped to China and subsequently bottled and labelled or re-labelled to ‘make’ imported wines. It was found that some counterfeiters succeeded the Customs clearance by forging documentation (Editorial 2012).

The data here shows that it is more often that cheap, unbranded bulk wines are supplied to China. Sometimes, overseas wine makers used unconsumable grapes to produce wine for exportation. These imports need re-processing by adding in chemicals to remove mouldy smells and improve the colour. Often, alcoholic component immersed considerably in the lengthy international transport process, and to blend in the deteriorated imports with edible alcohol and various chemicals became inevitable. Commonly, colourant was added into white wine to ‘make’ red (Zhong 2002). Substantially mixed, the components of these wines are hard to identify (Fu et al. 2017). These imported wines are clearly health concerning. It was estimated that such substandard cheap imports took 80 per cent of the market share in China. A Chinese wine expert revealed that some *legitimate* wine manufacturers also used this type of imports because they were very cheap (about £456 per ton), whilst domestic grown grapes were expensive due to a shortage of vineyards (Zhong 2002).

Along with imported fakes, ‘imported wines’ may be faked in China. Apart from labelling as explained earlier, counterfeiters may technically turn domestic wines into ‘imports’ in the Customs Special Supervision Zones (CSSZs). The CSSZs were established in 2012 to promote the international trade. They are essentially special economic zones managed mainly by the provincial Customs. In a CSSZ, goods are subject to simplified customs procedures, tax waivers and lax inspections (The Government of China 2012). It was found that the system was abused by unethical entrepreneurs who created the ‘one-day tour’ method to ‘magically create’ ‘imported wines’ within a day. Domestic wines, once in a CSSZ, are dealt with as if they are imports and cleared for distribution as imported wines in the internal markets (Zhang et al. 2013). This illegitimate practice is akin to that identified in the counterfeiting business in the EU (see e.g. Hall and Antonopoulos 2016): counterfeiting entrepreneurs make use of the special economic zones where the loosened policing and customs infrastructure help facilitate the counterfeiting activities, such as falsification of documents to avoid interception of the merchandise by the authorities (OECD/EUIPO 2017). For China, an additional question is how the counterfeit goods initially entered the CSSZs: is it a side-effect of the economic policy that aims to boost the import-export trade, a result of loopholes in practice, or corruption?

### 3. Distribution and Sales

Existing data shows that like legitimate products, fake wines are usually distributed through various channels and sold in all kinds of whole-sale and retailer outlets, including online marketplaces such as *Taobao* – a Chinese website for online shopping similar to Amazon and eBay. Brand-name foreign wines are often sold at high-priced night clubs, karaoke bars and other top-end entertainment facilities. Zhang (2012) observed that Internet vendors willingly facilitated sales of counterfeit wine and spirits. Chemicals such as flavouring and colouring essences are available online, which are expressly advertised as wine-making ingredients.

*WeChat* messaging and *QQ* chatrooms – Chinese equivalences of *Facebook* or *WhatsApp* – are now commonly used to trade in counterfeit goods (Editorial 2015).

Detected cases indicate the difficulties in tracing the origin and travel of counterfeits because of the vastness of the country and complexity of the counterfeiting business. As fake goods are typically made on order, storage is no longer necessary, and counterfeiters tend not to keep sales records (*China News* 2014). Online sales further complicate law enforcement in several ways. One is that the existing law is vague in regard to trading in the virtual space and in practice, no measures are available to enable effective routine inspection to police online marketplaces (Editorial 2015). Consequently, they appear to be a free trade zone for counterfeiters.

In the context of China, it is not uncommon for unethical entrepreneurs to fill eye-catching bottles with poor quality wines, package the wine products in elegant-looking gift boxes, and sell them at a high price. Doing so may not necessarily infringe others' IPRs but may still be highly profitable. A recent case showed that to make this type of fake wines costed less than 100 yuan but retail price could be as high as 3,000 yuan (Editorial 2017). These counterfeits are usually sold to deceived consumers. At the same time, wine counterfeiters also target 'deliberate' consumers who are driven by the tension between various consumption needs and affordability and choose to buy fake brand name wines, as illustrated in the notorious 'Shanye fake wine movement' across China (see Dong 2002). Thus, for Jiang (1994), consumers' vanity created a demand in the illegitimate wine market. Although the fake wine business can be highly profitable (Zhong 2002), profitability depends on a variety of factors (see detailed discussion in Antonopoulos et al. 2017).

A recent study found no supply of fake Chinese liquor from China to overseas markets (Shen and Antonopoulos 2016) possibly due to insufficient demand. As to wines, several

isolated incidents were available in the popular media, in which the counterfeit wines seized by the Chinese Customs authority were intended for consumers in the United States and Britain, and there was a fear of counterfeit wines of Chinese origin being finally making their way abroad (*Global Legal Post* 2015). Apart from that, little evidence suggests the flow of fake wine from China to other countries. Nick Bartman, a counterfeit-specialist lawyer, concluded that few of the fake wines in China are for export, and wine counterfeiting is China's domestic problem (Boyce 2012). For Wang Zemin, Deputy Secretary-General of China Wine Association, China's wine market is vast. Thus, there is no need for wine makers to endeavour to sell their products abroad (Yi 2011). This should apply to the illegitimate wine trade, too.

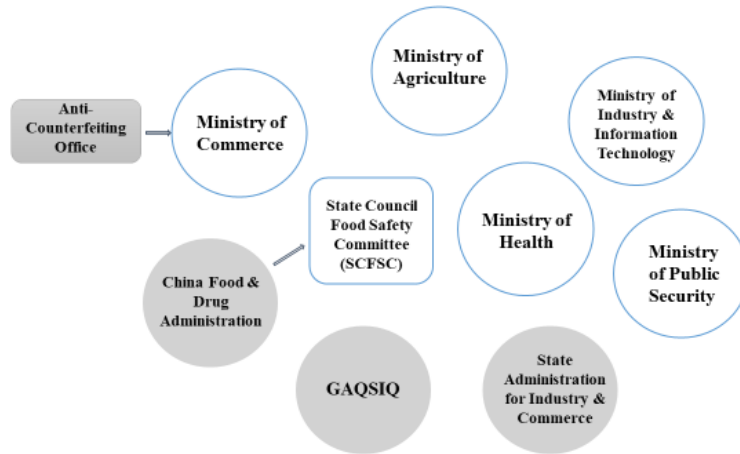
### **The policing of counterfeit wines**

As suggested earlier, China does seem to have comprehensive and strict laws to curb the wine counterfeiting business. However, the problem persists. Several problems have been identified, including general weak law enforcement in China, an 'inadequate administrative apparatus' (Morcom 2008) that hampers effective and efficient implementation of the law, and that in the alcohol industry, the administrative structure is blurry (Shen and Antonopoulos 2016). Following the FSL 2009, attempt has been made to develop a framework that enables to exercise tight control over the food industry, including the alcohol trade.

#### *Administrative structure and law enforcement players under the FSL*

Similar to other systems such as the UK (see Lord et al. 2017), a variety of authorities and agencies share responsibility in fighting alcohol counterfeiting in China, such as the Ministry of Health (MoH, public health), China Food and Drug Administration (CFDA, food safety), the Anti-Counterfeiting Office (A-CO, IPRs) and the Ministry of Public Security (MPS, criminal investigation). Chart 1 illustrates the administrative structure of enforcement of the food safety law, which the alcohol industry is under.

### **Chart 1. Administrative Structure of Enforcement of the Food Safety Law**



### Notes

1. GAQSIQ: China General Administration of Quality Supervision, Inspection and Quarantine.
2. China Food and Drug Administration was established in 2013 and subsequently, it became the executive body of SCFSC.
3. Anti-Counterfeiting Office is a department under Ministry of Commerce (MoC). Strictly speaking, it is not part of the administrative structure concerning food safety but may be involved (in some places takes the lead) in joint enforcement actions against alcohol counterfeiting.

As Chart 1 shows, the administrative structure is centred by the State Council Food Safety Committee (SCFSC) and the MoH. SCFSC is a regulatory body for food safety, which was established in 2010 and initially led by Li Keqiang – China’s Premier today and then Deputy Premier. It is now under directorship of the current first Deputy Premier. The creation of this high public office appears to show the commitment of the central government to food safety. The MoH (also known as the National Health and Family Planning Commission) takes primary responsibility for ensuring food safety, and functions to co-ordinate all public bodies responsible for the supervision, inspection and investigation in the food industry.

Other State Council (SC) components also play a part. For example, the Ministry of Agriculture is responsible for overseeing agricultural products (the start of the food supply chain); the Ministry of Industry and Information Technology and the MoC govern food safety in production, distribution and catering services (the end of the food supply chain). Several agencies under direct leadership of the SC are enforcement authorities in their particular fields

of administration, including CFDA (the executive body of SCFSC), State Administration for Industry and Commerce (SAIC) and General Administration of Quality Supervision, Inspection and Quarantine (GAQSIQ). They are usually called upon and led by the MoH to jointly investigate major incidents that involve serious breaches of the food safety law and may have a national impact. A similar administrative framework is set up locally, in which it is the local government that plays a leadership role (Sections 4, 5 of the FSL).

Hence, efforts have been made to create a new enforcement model to ensure food safety in China. It clearly defines the leadership and brings together multiple authorities and agencies at both central and local levels. So far, little evidence is available to indicate whether the new model has worked to effectively respond to alcohol counterfeiting. At the same time, gaps in practice have been identified (Sun 2010; Zhao and Chu 2010). This is not surprising if we consider the common problems appear in other places, where a similar system is adopted, in which responsibility lies with multiple authorities with competing agendas (e.g. Lord et al. 2017). In the case of China, there are further challenges, as we shall see later in this section.

Compared with that for food safety control, the administrative and enforcement structure for IPR protection is far less clear. Under the MoC, there is a national Anti-Counterfeiting Office (formally known as ‘Office for the Leading Team for Fighting against IPR Infringements and Counterfeit and Substandard Goods’, or ‘*da-jia-ban*’ abbreviated in Chinese). The agency appears to lead and co-ordinate national anti-counterfeiting operations. In some regions, the municipal governments have established their own *da-jia-ban* to play a similar role at the local level (Editorial 2007).

Anecdotal evidence suggests that SAIC and its local agencies, known as the Administrative Bureau of Industry and Commerce (ABIC), are in part responsible for dealing with product counterfeiting, including alcohol counterfeiting. ABICs carry out inspections, aiming for prevention and detection. They seem to have certain investigative powers. Sun and

Yao (2004) observed that a local ABIC in *Xinjiang* conducted a variety of investigative activities – overt and covert – and on one occasion, the investigators took the suspects to a hotel room for questioning.

Likewise, GAQSIQ, formally known as National Administration of Quality and Technology Inspection (NAQTI), is a national authority which directs its local bureaus to undertake quality supervision and inspection. Counterfeit and substandard goods may be detected in routine and reactive inspections, and individuals and businesses involved may be administratively sanctioned. The NAQTI also lead national crackdowns on counterfeiting goods. For example, it launched an enforcement campaign targeting alcohol counterfeiting in 2012, jointly with six other central government authorities. Locally, following a tip-off, *Dantu* Bureau of Quality and Technology Inspection (BQTI) in *Jiangsu* province carried out a reactive inspection, which resulted in the detection of a wine counterfeiting workshop and seizure of 11,208 bottles (nine types) of fake foreign wines (Editorial 2012).

In cases of alcohol counterfeiting, apart from ABIC and BQTI, other local agencies, such as Bureau of Commerce (formerly, ‘Bureau of Economy and Trade’), local Food and Drug Administration and the police. In some serious counterfeiting incidents, the police usually take the lead. Where imports and exports are involved, the Customs authorities usually play a central part in law enforcement operations, and the Chinese Customs has been praised for their anti-counterfeiting efforts (e.g. *Global Legal Post* 2015).

In addition, there are periodical national and local anti-alcohol counterfeiting crackdowns – the ‘campaign style enforcement’ for Dimitrov (2009) – when there appears to be a rising tide of alcohol counterfeiting or when the illicit business activities peak prior to the festival seasons, such as the Chinese New Year. Usually, the police lead joint actions with other

agencies to raid counterfeiting workshops, make arrests and confiscate fake goods and counterfeiting facilities (*Xinhua News* 2017).

It is hard to deny the Chinese government's efforts to fight against illicit alcohol and that enforcement pressure for counterfeiters in China is high. However, the illegitimate business seems to hold its ground. There are a number of challenges for law enforcement agencies – some are shared with other countries, whilst others are China's own.

#### *Actions against wine counterfeiting and remaining problems*

It is pointed out that a system that consists of multiple agencies, with clear leadership and collaboration and cooperation strategies is inevitable in the policing of food fraud (Elliott 2014; Fassam and Dani 2017). This of course applies to wine counterfeiting. In law enforcement practice, a common problem facing the counterfeiting-affected countries, as indicated earlier, is the lack of coordination in multi-agency working. As we have seen, in China, a number of agencies assume anti-counterfeiting responsibility in relation to the alcohol industry, but there lacks a clear division of responsibilities between them. Consequently, no one knows who exactly does what, and this is illustrated in a popular saying: one agency cannot manage it whereas multiple agencies cannot manage it well (Liu 2013).

Another shared problem links to departmentalism which may result in administrative vacuums in practice. Under departmentalism, each department – authority or agency – works to achieve their own objectives, from their own perspectives and in their own fashion. Nothing seems to be wrong as these departments are regulated entities striving to follow the laws that govern them (Kramer 2004). However, it may leave gaps when each department works only at their own goals but fails to go beyond and act on the common goal (Jiao 1998).

Usually, alcohol counterfeiting, and product counterfeiting in general, is a cross-region and even cross-border business. It thus requires national, regional and sometimes also



international operations. Information sharing, for example, helps holistically connect supply chains in the counterfeiting trade, which allows law enforcement to work seamlessly (Fassam and Dani 2017). However, information sharing is not always possible between different agencies (see e.g. Lord et al 2017), and agencies in different administrative regions. This is also a shared problem.

There are, of course, problems particularly for China given its unique political, socioeconomic and cultural conditions. One problem concerns inconsistency in law enforcement and sometimes ‘capricious enforcement’ (Dimitrov 2009). Inconsistency in policy and practice appears to be commonplace in China (Shen 2016a), which causes confusion and sometimes arbitrariness in law enforcement, and may give rise to legitimacy concerns. For example, *da-jia-ban* is not a public body. Although the agency at both central and local levels often leads anti-counterfeiting crackdowns, it is not empowered to conduct investigations, nor does it have authority to impose administrative sanctions, but the rules are not always strictly followed in the *ad hoc* anti-counterfeiting practices.

Past research has identified local protectionism as a problem associated with product counterfeiting (see details in Chow 2004; Kramer 2006; Lin 2011; Shen et al. 2010; Shen and Antonopoulos 2016). In the present study, the role that local protectionism plays in wine counterfeiting is well illustrated in the *Changli* case, in which the illicit business was apparently known to the local authority but ‘overlooked’ because it was viewed to have boosted the local economy: along with fake wine makers, the enabling businesses also grew fast by supplying ingredients, packaging materials and accessories to the counterfeit businesses (*Guangdong* 315.gov 2011). With little incentive, some local authorities keep a slack hand in implementing and enforcing the anti-counterfeiting and food safety laws (Liu 2013).

Corruption has also been linked with the counterfeiting trade (Dimitrov 2009; Editorial 2007; Jiao 1998). Ye (2004) went further and claimed that counterfeiting signals corruption.

*Xinhua News* – China’s state news agency – once suggested that some local food safety authorities turned fines into the ‘protection fees’: once fines were paid, the counterfeiters were ‘permitted’ to carry on illegitimate production (*Guangdong 315.gov* 2011). Corruption in China is structural (Yang 2016) which partially explains why the central government’s policy cannot be fully implemented, and why the national anti-counterfeiting crackdowns may not have a real impact on the counterfeiting industry.

Law enforcement on alcohol counterfeiting in China appears to be heavy-handed. Despite the remaining problems, it is recognised that the anti-counterfeiting practice from a food safety perspective has improved (Liu 2013), and that the alcohol counterfeiting industry is suppressed (Ye 2003). However, little hard available is available to back these up.

### **Discussions and conclusion**

This article set out to discuss three major themes in relation to wine counterfeiting in mainland China: first, the definitional issue of counterfeiting; second, the scope and scale of the wine counterfeiting business and how fakes are made available; and third, the policing of counterfeit wines. As we have seen, the findings in this study illustrated a complex and evolving nature of the counterfeiting trade. Thus, the definition of counterfeiting requires constant revision to reflect the ever-changing characteristics of the ‘second-oldest profession’ (Yang 2016) in today’s globalised capitalist business practice.

For the first theme, it suggested that fake wines in the Chinese markets can be categorised into four types: (1) Fake brand-name wines – wine products involving unauthorised use of other’s brand names. For example, a wine is made identical to and sold as that of *Lafite*; (2) Passing-off or ‘look-alike’ (Vandagraf 2015) wines – wines that are made to resemble other wine brands. For example, a wine is made to mimic *Lafite* but uses a similar (rather than identical) brand-name, such as *La Fite* or *LaFeit*; (3) Misrepresented wines. They refer to wines – genuine or fake – that are falsely presented to mislead consumers as to their quality and

product specifications. For example, for a higher price, a newly brewed wine is misrepresented and sold as an aged or vintage wine, or a local wine is offered for sale as an import; and (4) False wines – they are fakes that have little or no wine content and thus are essentially not wine.

The first two categories are typical knock-offs and deliberately trading in them violates others' trademark rights. The second two types may or may not involve IPR infringements, but are fraudulent and may amount to crime in China and many other systems including the UK. As we have seen, fakes – domestic products and imports – are frequently of inferior quality or even made of chemicals which may cause long term and may be serious health consequences. The article suggested that wine counterfeiting overlaps with food fraud and as product counterfeiting in general, it causes a wide range of harms that is far beyond IPR violation. Essentially, it suggests a broader working definition of counterfeiting which has extended that of Lin (2011) by embracing illegitimate behaviours which are conducted in the everyday counterfeiting business, but involve no IPR infringements, to reflect a more realistic nature of product piracy.

For the second theme, the article detailed some underlying and routine activities in the counterfeiting process (Lord et al. 2017). No evidence here has suggested the involvement of organised crime rings in the wine counterfeiting trade, and the illicit economic sector in China appears to be made up of individuals and small and medium enterprises – similar to the counterfeiting phenomenon in the wine and spirits industry in the EU (see EUIPO 2016). In line with the existing literature (see e.g. Hall and Antonopoulos 2016; Lord et al. 2017), this article noted that legitimate companies also occupied the 'dirty' or 'grey' markets (Edwards and Gill 2002). At the same time, the findings showed that wine counterfeiting – as product counterfeiting as a whole – requires a certain level of social, financial and operational organisation. In the illicit trade, just like in the legitimate business world, it is essential for individual players to cooperate and conspire (Edwards and Gill 2002). Thus, this study

examined wine counterfeiting within the analytical framework of organised crime research, and hopes to contribute to the careful and comprehensive analysis of the nature of the problem (Levi and Maguire 2004). A further reason to situate commodity counterfeiting in the context of organised crime is to persuade policy makers to prioritise the illicit business on law enforcement agenda (e.g. NCA 2016, 2017).

Towards the end of this article, it becomes clear that the counterfeiting phenomenon is an integral part of the capitalist business practice, in which the market rule applies. China, among other countries in the developing world, has the ‘global reputation as a “making and faking” nation’ (Yang 2016) and it is often blamed for being the largest producing market of counterfeit goods in the world (OECD 2016). However, what is overlooked is that developing countries are also recipients, consumers (Taylor 2016) and thus victims of the global counterfeiting trade. As this article showed, in the counterfeiting world, there are no real cultural barriers – anyone from any part of the world may participate in product piracy, as long as the individual is motivated by a strong economic incentive and may have a modest amount of start-up capital. At the same time, what is also in common in any part of the world – the developed and developing economies – is that no one can accept counterfeit goods that harm or endanger public health and safety (Pang 2008). This relates to the third theme of this article.

It suggested that alcohol counterfeiting is a viable business and counterfeiters change swiftly to maximise profit and avoid detection. Thus, it is predicted that the cat-and-mouse game will continue (Ye 2000). From a law enforcement perspective, the findings in this study have helped to identify a number of challenges in anti-counterfeiting practice: some are shared, for example, the common problems in multiagency working, whilst others are mainly for China, including local protectionism and corruption. They often render anti-counterfeiting crackdowns to end up with ‘loud thunder but small raindrops’ in some local areas. They, among

others, explain why the national anti-counterfeiting policy and practice in China have not had a significant impact on the counterfeiting trade.

At the policy level, as we have seen, the central government is committed to halt the prevalence of the counterfeiting industry, especially from a public health perspective. However, in the market economy, entrepreneurial activities – including illegitimate business practices – are market-driven. That is to say, as long as the neoliberal policy continues in China, it is hard for the state to effectively intervene and stop any money-making methods, even where harsh penalties are available for the illegalities (Shen 2016b).

Compared with other social, legal and economic problems, product counterfeiting is still an under-researched area. This article reported a rare study which used wine counterfeiting in China as a case study to piece together the disparate parts of the criminal market, and therefore, throws some new light on the complex and potentially harmful trade in dangerous counterfeit goods. It is hoped that more rigorous empirical approaches can be taken in future studies, to gather more first-hand information which helps to develop ‘a clearer understanding of the various crime scenes, actors and their resources’ (Levi and Maguire 2004: 457) in the illegitimate business sector. In this study, insights into the wine counterfeiting business were gained from the rich data drawn from a broad range of published materials: research monographs, academic and specialist journals (e.g. the *China Anti-Counterfeiting Report*), official reports and other supporting materials in open sources in both English and Chinese languages. Despite the usual limitations of the method and data (see Shen et al. 2010; Shen and Antonopoulos 2016), the findings here should have a wider application and are capable of providing policymakers and practitioners with an evidence-based understanding of the counterfeiting trade, so as to inform policy and practice in China, and beyond.

Finally, it is worth noting that given the current nature of the wine counterfeiting business in China, whichever national anti-counterfeiting measure is taken, it is unlikely to have much

external impact on the global wine markets, but may direct international counterfeiters to other locations where the marketplace is less regulated and thus more susceptible to alcohol counterfeiting.

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