



'Being Affluent, One Drinks Wine': Wine Counterfeiting in Mainland China

Anqi Shen¹

Northumbria University, United Kingdom

Abstract

This article focuses on wine counterfeiting and the policing of fake wines in mainland China. Relying on rich data drawn from published materials and open sources, it discusses three important themes in relation to product counterfeiting: the definitional issue; the scope, scale and organisation of the counterfeiting business; and law enforcement against product piracy. The aim is to broaden our knowledge about the counterfeiting trade, to develop a clear understanding of the illegitimate market, and to help to renew countermeasures that not only enable the exercising of tighter control over the counterfeiting industry but also disrupt the illegal behaviours of counterfeiters. Rather than place emphasis on the protection of intellectual property rights, this article stresses public health concerns with regard to dangerous counterfeit goods such as fake wines. Examining wine counterfeiting within the existing analytical framework of organised crime research, this article contributes to analysis of the nature of product counterfeiting and the issue of policing counterfeit goods.

Keywords

Counterfeiting; wine; alcohol; public health; policing; China.

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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 intellectual property rights (IPRs). Typically, counterfeit goods are films and sound recordings, 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 industry 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. 2018). 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 its evolving complexity.

Literature about counterfeiting embraces a wide range of themes, in which IPR infringements are often central. 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, the counterfeiting trade has a considerable economic impact and, therefore, warrants official attention (see, for example, United Nations Office on Drugs and Crime 2014). Research has also suggested links between counterfeiting and organised crime (see, for example, Gowers 2006; Lowe 2006; Reynolds and McKee 2010; Satchwell 2004; Treverton et al. 2009). An earlier 'general criminological indifference' to IP crimes (see Anderson 1999; Yar 2005) may no longer be sustained. Yet, commodity counterfeiting is not a high priority of law enforcement agencies. For example, in the United Kingdom (UK), it is not named by Lynne Owens—Director General of the National Crime Agency—under any of the three crime fighting priority headings of vulnerability, prosperity and commodity (see National Crime Agency 2017). This is perhaps because of other competing threats (for example, the sexual exploitation of children, firearms smuggling, cybercrime, human trafficking and modern slavery). This is also possibly 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 violations, it may pose acute threats to public health and safety. The nature, organisational characteristics and potential harms of the trade in dangerous counterfeit goods need thorough investigation to gain fuller appreciation of the scope of the problem.

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: the definition of counterfeiting; the scope, scale and social and operational organisation of the counterfeit business; and the policing of counterfeit goods, an important subject 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 not only enable the exercising of tighter control over the counterfeiting industry but also disrupt the illegal 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 definition (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 in both legal and lay contexts (Yar 2005).

While counterfeiting is not defined in the law in many jurisdictions, a legal definition for 'counterfeit goods' is available in the European Union (EU) context. 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 IPRs can be described as counterfeiting *or* piracy (Bainbridge 2012). Often, 'pirated' and 'counterfeit' goods, and 'counterfeiting' and 'product piracy' are interchangeably used (see, for example, Norman 2014; Organisation for Economic Co-operation and Development (OECD) 2016).

Lin (2011) explained counterfeiting by dividing it into three types of infringements: the unauthorised use of a brand name or trademark; the use of names, designs and logos that intentionally resemble a brand; and the unauthorised sale of legitimately produced brand name goods. Clearly, IP law is the basis of this classification of infringements. In fact, it is now accepted that counterfeiting causes harms beyond IPR infringements, and it should be suppressed not only to protect legitimate traders' economic interests, but also to prevent consumers from being deceived into buying substandard goods and, more importantly, to protect people from consuming dangerous fake goods (Bainbridge 2012; Gowers 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* (UK) to address the seriousness of those IP violations, prevent the trade in counterfeit goods that endanger 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 and consumer protection law as well as criminal law.

Under *Chinese Criminal Law 1997*, 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 first category outlaws counterfeiting trademarks, of which an offence is punishable by up to seven years' incarceration, whilst the second category concerns public health and safety, for which the maximum penalty is life imprisonment. Under the existing law, the sale of counterfeit goods is also a criminal offence if a person has sold or offered counterfeit goods for sale 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* is usually triggered. It aims to strengthen food safety in China (Section 2) and outlaw bad practices in food production chains (Section 28). Shu and Li (2014) point out that this law provides substance to the matching criminal law provisions.

Chinese law indicates that wine counterfeiting amounts to not only IPR infringements but is also a serious crime which undermines the economic order of the socialist market 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, for example, Elliott 2014; Fassam and Dani 2017; Olmsted 2016).

In order not to complicate the definitional issue (which remains unsettled), and to keep in line with recent counterfeiting research into illegitimate alcohol (see, for example, Lecat et al. 2017; Lord et al. 2017; Shen and Antonopoulos 2016; Vandagraf 2015), this article discusses wine counterfeiting in the broad context of organised crime research. However, in my concluding

comments, I propose an extended working definition of counterfeiting by adding some behaviours regarding food (wine) fraud.

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 more than 600 by 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-tier (Beijing, Shanghai, Guangzhou, Shenzhen, Tianjin) and second-tier (including Dalian, Qingdao, Hangzhou, Nanjing and Xiamen) 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: 46). Gradually, the wine market has expanded to third-tier cities and to some rural areas in China (Li et al. 2007). Now, the wine market is 'booming' (Byrnes 2013) and, accordingly, the wine industry is 'thriving' (Global City Media 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. In recent years, it was estimated that Europe exported nearly USD\$1 billion worth of wine to China (Byrnes 2013), and imports represented more than 30 per cent of the 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 of the top three branded Chinese wines—*Zhangyu*, the Great Wall and Dynasty—as well as some top-end foreign wine brands were discovered (Huang 2012). It was revealed in 2013 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), demonstrating a counterfeiting phenomenon that is not unusual in the global wine market (Lecat et al. 2017).

Due to its clandestine nature, gauging the scale of the wine counterfeiting business is difficult. Official statistics are unavailable. According to one journalist account, in 2015, 30 per cent of all alcohol in China was counterfeit (*The Guardian* 2015). With wines, it was estimated in 2002 that counterfeits comprised 57 per cent of the total amount of wine (400,000 tons) sold in the country annually (Wu and Wang 2002). This proportion is believed to have risen since then, with Bartman (2013) assessing that, a decade later, over 70 per cent of the wines sold in China were not original: in other words, they were fakes (see also Shen and Antonopoulos 2016). French wines seem to be particularly targeted: one source suggested that one out of every two bottles of top-brand French wines sold in China was fake (American Public Media 2015); another suggested there was at least one counterfeit for every authentic bottle of French wine (Mustacich 2015).

It should be noted that these numbers are rough estimates and 'impressionistic' (Yar 2005) and, while not true reflections of the scope and scale of the wine counterfeiting business, 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 numbers and examples indicate a significant economic market of illegitimate wines, about which no comprehensive knowledge is available. Lecat and colleagues (2017: 96) argue that 'the key issue in the fight against counterfeiting is to have a broad awareness of the whole supply chain in the wine industry'. I add that it is also salient to identify the organisational characteristics of the wine counterfeiting industry and the everyday activities of counterfeiters. In this paper, this is done by examining the wine counterfeiting process.

The process of wine counterfeiting

Generally speaking, the counterfeiting process of most products primarily consists of manufacturing (including labelling and packaging), importation-exportation (if applicable), internal transport and distribution (including sales) (see, for example, Shen, Antonopoulos and von Lampe 2010). Wine counterfeiting is no exception. Several stages in the wine counterfeiting process are worth noting.

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 literature 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 (see, for example, Shen and Antonopoulos 2016). This method involves the reuse of recycled original bottles, to which usually genuine labels are still attached. Using original bottles makes it easy to deceive unaware consumers. Relatedly, there has been an 'extraordinary demand' for empty bottles of famous wines (Taylor 2016; Vandagraf 2015) and this method of deception explains why a buyer in Beijing paid 2,900 yuan (about £330) for a used bottle of *Lafite Rothschild* (Moore 2011).

Re-labelling is another common method which involves replicating bottles or labels of the genuine, usually cheap, brands. For example, counterfeiters will 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 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 (for example, certificates of product origin, year of production and quality verification) were widely available on the black market (see also Fu et al. 2016).

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

Product counterfeiting is clearly profit-driven. Accordingly, whichever methods are used, profitability is what matters to counterfeiters. Existing data show that, while fake wines may be of high quality and 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). These additives have little or no wine content and thus are essentially creating '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 and even personal injuries.

Exportation-importation

Imported wines are preferred to domestic products in China (*Zhejiang Daily* 2012). As a result, wines with a foreign label are usually marketed at a good price and sell well. Thus, foreign wines are frequently counterfeited. Counterfeit wines of foreign appearance 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. Some counterfeiters have been found to achieve customs clearance by forging documentation (Editorial 2012).

Existing literature (see, for example, Fu et al. 2016; Zhong 2002) indicates that, mostly, cheap, unbranded bulk wines have been supplied to China. Sometimes, overseas wine makers have used spoiled grapes—that is, grapes not fit for consumption—to produce wine for export. These imports have needed re-processing, by way of adding chemicals, to remove mouldy smells and improve the colour. Often, the alcoholic component has been considerably diluted in the lengthy international transport process, and the deteriorated imports have been blended with edible alcohol and various chemicals to improve their marketability. Commonly, colourant has been added into white wine to make it appear to be red wine (Zhong 2002). Consequently, with a mixture of ingredients, the components of these wines are hard to identify (Fu et al. 2016). These imported wines are clearly a health concern. According to Zhong (2002), such substandard cheap imports have been estimated to comprise 80 per cent of the market share in China, an even higher estimate than those presented earlier. A Chinese wine expert revealed that some *legitimate* wine manufacturers have also used these types 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 international trade. They are essentially special economic zones managed mainly by provincial customs authorities. In a CSSZ, goods are subject to simplified customs procedures, tax waivers and lax inspections (The Government of China 2012). Zhang et al. (2013) observed that the system has been abused by unethical entrepreneurs who have 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 internal markets. This illegitimate practice is akin to that identified in the counterfeiting business in the EU (see Hall and Antonopoulos 2016): counterfeiting entrepreneurs make use of the special economic zones where the relaxed policing and customs infrastructure help facilitate the counterfeiting activities, such as falsification of documents, to avoid interception of the merchandise by the authorities (OECD and EU Intellectual Property Office 2017). The 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?

Distribution and sales

Existing data show that, like legitimate products, fake wines are usually distributed through various channels and sold in all kinds of wholesale and retail 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 nightclubs, karaoke bars and other top-end entertainment facilities. Zhang (2012) observed that Internet vendors willingly facilitated sales of counterfeit wines and spirits. Additives such as flavouring and colouring essences are available online, where they 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).

Identified cases indicate the difficulties in tracing the origin and travel of counterfeits because of the vastness of the country and the complexity of the counterfeiting business. As fake goods are typically made to order, storage prior to sale is not necessary, and counterfeiters tend not to keep sales records (*China News* 2014). Online sales further complicate law enforcement in several ways. One way is that the existing law is vague in regards to online trading 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 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 it costs less than 100 yuan to make this type of fake wines but the retail price could be as high as 3,000 yuan (Editorial 2017). These counterfeits of what appear to be, based on packaging and price, high quality end products are typically intended to deceive consumers. At the same time, wine counterfeiters also target 'deliberate' consumers who are driven by the tension between various consumption needs and affordability. These consumers often choose to buy fake high-end brand name wines at cheap prices to present them as gifts to relatives and friends, usually on special occasions, so as to appear more affluent and generous. This is illustrated by the notorious '*Shanye* fake wine movement' in China². 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. 2018).

A recent study found fake Chinese liquor from China was not being supplied to overseas markets (Shen and Antonopoulos 2016), possibly due to insufficient demand. However, several isolated incidents were published in the popular media where counterfeit wines seized by Chinese customs were intended for consumers in the United States and Britain, and there was fear of counterfeit wines of Chinese origin finally making their way abroad (Global City Media 2015). Apart from this, 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 solely China's domestic problem (Boyce 2012). For Wang Zemin, Deputy Secretary-General of the 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 difficulties have been identified in the policing of counterfeit wines, including weak law enforcement, an 'inadequate administrative apparatus' (Morcom 2008) that hampers effective and efficient implementation of the law, and an unclear administrative structure in the alcohol industry (Shen and Antonopoulos 2016). Following enactment of the Chinese *Food Safety Law 2009*, an attempt has been made to

develop a framework that enables the exercising of tighter controls over the food industry, including the alcohol trade.

Administrative structure and law enforcement players under the Food Safety Law 2009

Similar to other enforcement systems, such as the UK's (see Lord et al. 2017), a variety of authorities and agencies share responsibility for fighting alcohol counterfeiting in China, including, *inter alia*, the Ministry of Health (MoH, responsible for public health), China Food and Drug Administration (CFDA, responsible for food safety), the Anti-Counterfeiting Office (ACO, responsible for IPRs) and the Ministry of Public Security (MPS, responsible for criminal investigation). Figure 1 illustrates the administrative structure for the enforcement of the *Food Safety Law 2009*, which includes scrutiny of the alcohol industry.

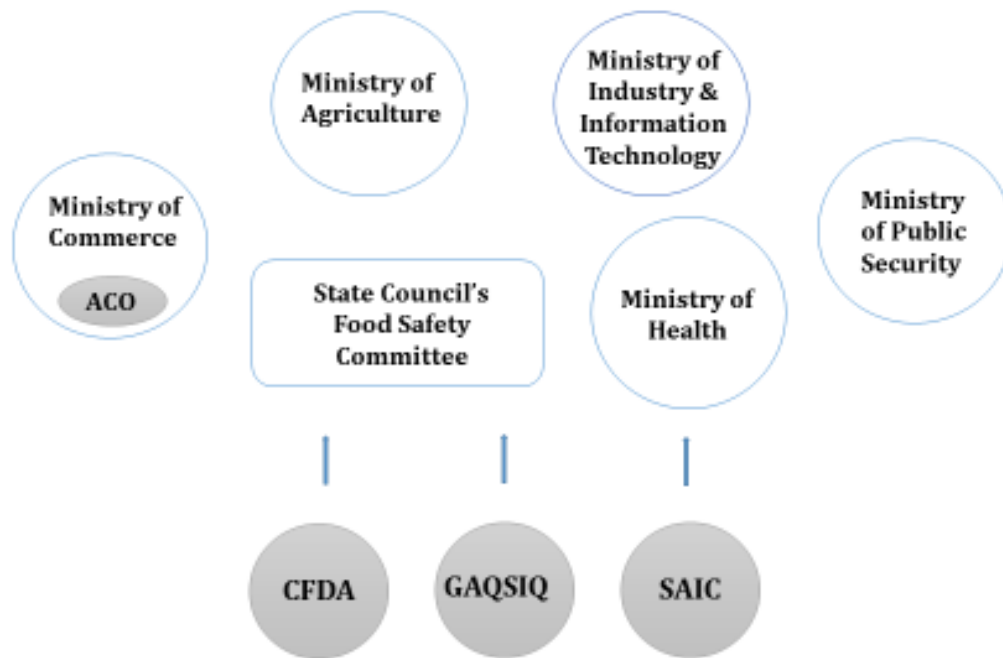


Figure 1: Structure of food safety administration in China

Notes

1. The CFDA was established in 2013 and subsequently became the executive body of the State Council's Food Safety Committee (SCFSC).
2. The CFDA, the General Administration of Quality Supervision, Inspection and Quarantine (GAQSIQ) and the State Administration for Industry & Commerce (SAIC) are enforcement authorities under direct leadership of the State Council (SC).
3. The ACO is a department within the Ministry of Commerce (MoC). Strictly speaking, it is not part of the administrative structure concerning food safety but may be involved (in some places take the lead) in joint enforcement actions against alcohol counterfeiting.

As Figure 1 shows, the State Council's Food Safety Committee and the MoH are the core in food safety administration. The SCFSC, which was established in 2010 and initially led by Li Keqiang, China's Deputy Premier at that time and who is China's Premier at the time of writing, is a regulatory body for food safety. It is now under the directorship of the current first Deputy Premier. The creation of this public office headed by such a high-ranking official appears to show the commitment of the central government to food safety. Along with it, the MoH (also known as the National Health Commission) takes primary responsibility for ensuring food safety, and functions to coordinate all public bodies responsible for the supervision, inspection and investigation in the food industry.

Other State Council jurisdictions also play a part in the administration and enforcement of food safety. For example, the Ministry of Agriculture is responsible for overseeing agricultural products (the start of the food supply chain); and 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, as Figure 1 shows, including CFDA (the executive body of SCFSC), State Administration for Industry and Commerce, and General Administration of Quality Supervision, Inspection and Quarantine. They are usually called upon and led by the MoH to jointly investigate major incidents that involve serious breaches of the *Food Safety Law 2009* and that may have a national impact. A similar administrative framework is set up locally, in which the local government plays a leadership role (Sections 4, 5 of the *Food Safety Law 2009*).

Hence, efforts have been made to create a new enforcement model to ensure food safety in China. This model attempts to clearly define the leadership and to bring 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. Instead, gaps in practice have been identified (Sun 2010; Zhao and Chu 2010). This is not surprising if we consider the common problems that appear in other countries, such as in the UK, where similar regulatory systems have been adopted, in which responsibility lies with multiple authorities with competing agendas (for example, Lord et al. 2017). In the case of China, there are further challenges, as we shall see later in this section.

Compared with the regulatory structure for food safety control, the administrative and enforcement system 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 coordinate 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, formerly 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 GAQSIQ also leads 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, the 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, often participate in anti-counterfeiting actions. In serious counterfeiting incidents, the police usually take the lead. Where imports and exports are involved, the customs authorities

typically play a central part in law enforcement operations, and Chinese customs authorities have been praised for their anti-counterfeiting efforts (see, for example, Global City Media 2015).

In addition, when there appears to be an increase in alcohol counterfeiting or when illicit business activities peak prior to the festival seasons, such as the Chinese New Year, there are national and local anti-alcohol counterfeiting crackdowns, what Dimitrov (2009) refers to as 'campaign style enforcement'. In these campaigns, 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 that the Chinese government has made considerable efforts in the fight against illicit alcohol and that pressure on counterfeiters from law and administration enforcement 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

Research indicates that a system which consists of multiple agencies, with clear leadership and collaboration and cooperation strategies is essential for the successful policing of food fraud (Elliott 2014; Fassam and Dani 2017). This, of course, encompasses wine counterfeiting. In law enforcement practice, a common problem facing counterfeiting-affected countries, as indicated earlier, is the lack of coordination in multi-agency work. As we have seen, in China, a number of agencies assume anti-counterfeiting responsibility in relation to the alcohol industry, but a clear division of responsibilities between them is lacking. Consequently, no one knows exactly who 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, in practice, result in administrative vacuums. 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, this may leave gaps when each department works only to achieve its own goals, but fails to go beyond that and act towards 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 local, regional and sometimes also international cooperation. Information sharing, for example, helps to 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 within the same jurisdiction (see, for example, Lord et al. 2017), let alone agencies in different administrative regions. This is also a shared problem.

There are, of course, problems specific to China, given its unique political, socioeconomic and cultural conditions. One such 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. In reality, agencies' scope of power is not always observed and the rules are not always strictly followed in what are often 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 and Antonopoulos 2016; Shen, Antonopoulos and von Lampe 2010). 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 local businesses also grew fast by supplying ingredients, packaging materials and accessories to the counterfeit businesses (*Guangdong* 315.gov 2011). With little incentive to do otherwise, some local authorities adopted a slack approach to 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 'protection fees'; once fines were paid, the counterfeiters were 'permitted' to carry on illegitimate production (*Guangdong* 315.gov 2011). Corruption in China is rampant (Yang 2016) which partially explains why the central government's policy cannot be fully implemented, and why national anti-counterfeiting crackdowns may not have a real impact on the counterfeiting industry.

Law enforcement on alcohol counterfeiting in China, when applied, appears to be oppressive. Despite the remaining problems, it is recognised that anti-counterfeiting practices from a food safety perspective have improved since the new law came into force (Liu 2013), and that the alcohol counterfeiting industry has been suppressed to some extent (Ye 2003). However, little hard data are available to back up these claims.

Discussion 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. It has 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.

The first theme suggested that fake wines in the Chinese market can be categorised into four types: fake brand-name wines (for example, a wine is made identical to and sold as that of *Lafite*); passing-off or 'look-alike' (Vandagraf 2015) wines (for example, a wine is made to mimic *Lafite* but uses a similar, rather than identical, brand name); misrepresented wines (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 false wines (which have little or no wine content and are, in fact, 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 legal 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 perhaps serious health consequences. The article indicated that wine counterfeiting overlaps with food fraud and, like product counterfeiting in general, causes a wide range of harms that go far beyond IPR violation. Essentially, the article suggests a broader working definition of counterfeiting which extends that of Lin's (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 (see also Lord et al. 2017). No evidence suggests 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 EU Intellectual Property Office 2016). In line with the existing literature (see, for example, Antonopoulos et al. 2018; 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 with product piracy 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 article examined wine counterfeiting within the analytical framework of organised crime research, with a view to contributing 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 agendas (see, for example, National Crime Agency 2016, 2017).

Clearly, the counterfeiting phenomenon is an integral part of capitalist business practice, in which market rule applies. China, among other countries in the developing world, has the 'global reputation as a "making and faking" nation' (Yang 2016: 3) and it is often blamed for being the largest producer of counterfeit goods in the world (OECD 2016). However, what is overlooked is that developing countries are also recipients and consumers (Taylor 2016) and, thus, victims of the global counterfeiting trade. As this article has shown, 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 has a modest amount of start-up capital. At the same time, what is also in common in any part of the world—in both developed and developing economies—is that no one should accept counterfeit goods that harm or endanger public health and safety (Pang 2008). This relates to the third theme of this article.

Alcohol counterfeiting is a viable business and counterfeiters change their strategies, methods and approaches swiftly to maximise profit and avoid detection. Thus, the cat-and-mouse game between policing authorities and counterfeiters is predicted to continue (Ye 2000). From a law enforcement perspective, this article has identified a number of challenges in anti-counterfeiting practices. Some are shared—for example, those associated with multi-agency areas of responsibility—whilst others appear more problematic for China, including weak law enforcement, local protectionism and corruption. These challenges often render anti-counterfeiting crackdowns to 'loud thunder but small raindrops' events in some local areas and, at the national level, they explain why anti-counterfeiting policy and practice in China have not had a significant impact on the counterfeiting trade.

At the policy level, as the article has shown, the central government is committed to confronting 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 neoliberalism continues in China, it is hard for the state to effectively intervene and stop illegal money-making methods, even where harsh penalties are available (Shen 2016b).

Compared with other social, legal and economic problems, product counterfeiting is still an under-researched area. This article provides insights into the wine counterfeiting business which were gained from the rich data drawn from a broad range of published materials: research monographs, academic and specialist journals (for example, the *China Anti-Counterfeiting Report*), official reports and other supporting materials in open sources in both English and Chinese languages. It used wine counterfeiting in China as a case study to piece together the disparate parts of the criminal market and, therefore, sheds some new light on the complex and potentially harmful trade in dangerous counterfeit goods. Despite the usual limitations of the

method and data³ (see Shen and Antonopoulos 2016; Shen, Antonopoulos and von Lampe 2010), the findings here have a wider application and are capable of providing policymakers and practitioners with an evidence-based understanding of the counterfeiting trade to inform policy and practice in China and beyond. It is hoped that more rigorous empirical approaches can be taken in future studies to gather more first-hand information which will help to develop 'a clearer understanding of the various crime scenes, actors and their resources' (Levi and Maguire 2004: 457) in the illegitimate business sector.

Finally, given the current nature of the wine counterfeiting business in China, whichever national anti-counterfeiting measure is taken is unlikely to have much impact on global wine markets, but may direct international counterfeiters to other locations where the marketplace is less regulated and thus more susceptible to alcohol counterfeiting.

Correspondence: Anqi Shen, Professor of Law, Northumbria Law School, Northumbria University, Newcastle-upon-Tyne, NE1 8ST, United Kingdom. Email: anqi.shen@northumbria.ac.uk

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² At the beginning of the new millennium, *Shanye* wine—literally, 'the wine made from grapes grown in wild, mountainous regions' (*vitis amurensis*)—rapidly gained popularity in China. In those years, Chinese wine manufacturers increasingly turned to produce *Shanye* wines. The market demand also attracted a large number of counterfeiters (Dong 2002; Wang 2002). Dong (2002) reported that, in Jilin alone, among more than 200 *Shanye* wine 'manufacturers', only about ten making genuine *Shanye* wine. To boost sales, counterfeiters adopted several marketing strategies, including making every effort to create a luxury image for their fake products. For example, they offered to sell cheap gift sets of *Shanye* wines to attract low-income consumers. In one gift set, counterfeit *Shanye* wine was contained in a small artistically designed chunky bottle, which was elegantly placed in a little basket hand made with white reeds. These counterfeit products met the need of many of those who wanted to buy expensive gifts at cheap prices (Dong 2002).

³ The major limitations of the method include: the data were drawn from what was available in open sources at the time of the research, hence there is a 'generalisation issue'; the information that the article relied upon was largely gathered from cases that were detected by the authorities and subsequently publicised, and thus 'successful' counterfeiting schemes and unreported cases were not included in the analysis; and it is possible that the official and media accounts were biased towards only law enforcement measures and performance which have been successful, and thus failures are omitted.

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