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ON THE LEGAL LIABILITY FOR FALSIFICATION OF COMMODITIES

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О ЮРИДИЧЕСКОЙ ОТВЕТСТВЕННОСТИ ЗА ФАЛЬСИФИКАЦИЮ ТОВАРОВ

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The aim of research is to study the problems of legal regulation and protection of food products from falsification. The Republic of Kazakhstan has adopted a number of laws, but their adoption, unfortunately, does not reduce the risk of consumer fraud and the level of tampering. The article emphasizes the need to develop evidence-based guidance to investigate crimes related to counterfeiting of products. The theoretical basis of the research is built on the ideas of domestic and foreign scholars works in criminal law, and criminology.

Keywords: *falsification, deception, fraud, crime, examination.*

In the Address of President Nursultan Nazarbaev to the people of Kazakhstan he stated that "...on driving to wards 30 developed countries in the world, we need to create the environment of fair competition, justice, rule of law and high legal culture" / 1 /. In the modern conditions of the reform of Kazakhstan's society the economic relations occupy a leading position. The market impacts significantly the nature of the economic activity of enterprises and businesses. Formation of market relations in Kazakhstan, along with positive phenomena - saturation of the market various goods and services, has led to the appearance of negative phenomena - deception, underweight, calculation, sell substandard and counterfeit of products.

Every consumer needs state support and protection from these negative phenomena. The state defends the rights of consumers, forcing merchants, entrepreneurs and manufacturers to offer only quality products to the buyer. These consumer rights are reflected in various legislative documents - the Constitution of the Republic of Kazakhstan, the Criminal, Civil Code of RK, RK Law "On Consumer Rights Protection", "On the quality and safety of food products" and other acts. At the same time, these laws often do not save the buyers from cheating, which happen in the markets.

Falsification (from Lat. Falsifico - spoofs) - action aimed at deceiving the buyer and / or user by forging object of sale corruptly. Sales of goods and products that do not meet safety requirements, is one of the methods of consumer fraud, which generates the need for delineation of the offense under the law "On the quality and food safety."

The sale of goods and products that do not meet safety requirements, threaten or actually harm human health and life. As the consequences of consumer fraud in trade is property damage to the victim. According to the Law of RK "On quality and safety of food products" manufacturing and selling of fake food products, materials and articles in contact with them, carry an administrative fines: on citizens in the amount from 20

to 25 minimum monthly wages with or without the confiscation of goods; individual entrepreneurs - from 30 to 40 the minimum wage and officials - from 40 to 50 the minimum wage or legal persons from 500 to 1000 SMIC with or without the confiscation of goods / 2 /.

In the past few years, Kazakhstan has seen steady growth in criminal attacks of economic orientation, including production and sale of goods that are falsificated and (or) counterfeit.

Counterfeiting - is manufacturing, selling or unlawful use of a patent, copyright infringement, fake of a trademark. Counterfeit products include, for example, the use by firms on their products trademark of famous products of other companies with the purpose of unfair competition and misleading the buyer. At the legislation has defined the features which identify that the goods are counterfeit. According to the Law of RK "On Trademarks, Service Marks and Appellations of Origin" counterfeit goods include labels and packaging of these products, which illegally use trademark or is similar to the trademarks of other companies. Thus, it should be noted that no one except the owner has the right to use its trademark without permission (without a license agreement or assignment to a trademark). / 3 /

The falsification of goods entering the domestic market, causes shadowing of economic relations which poses not only a threat to economic development prospects of the regions and the country as a whole, but also threat to life and health of consumers.

The weakness of the legal framework, failure of the current legislation as well as a huge profit from the sale of counterfeit products sometimes reach up to 500% - the main reasons for the high growth of production and sales of such products. This is evidenced by audits conducted by the state control. So, in October 2013 during the regular tax audits in Karaganda shopping sites the authorities, together with the financial police of Karaganda region revealed a large consignment of counterfeit alcohol products with accounting and control stamps in the amount of 4456 bottles totaling 2,584,776 tenge / 4 /.

We should not delude ourselves that falsified and counterfeit products come only in small retail chain, markets and shops in economy class. Even in expensive boutiques, department stores, supermarkets and hypermarkets there are many counterfeit and pirated products.

Besides the mention above reasons we may highlight a number of reasons: the demand for such products, as it is sold at discounted prices compared to genuine products; the difficulty of establishing the identity and authenticity of goods sold and purchased, which requires costly examinations and tests, and the

lack of competent specialists with the necessary knowledge and skills for identification of goods.

The falsification of goods and services has been and remains a huge problem for humanity. This is particularly evident in the market conditions, where are many independent companies and organizations, providing a wide range of goods and services, using various types of marketing communications, particularly advertising. Sales of goods that do not meet safety requirements, is one of the ways to deceive consumers.

The losses of society from the issue of falsified products are due to the irrational use of natural, human, material and other resources as well as the deterioration of health of the nation, its gene pool, life expectancy. In turn, this raises serious demographic problems (natural population decline, increased mortality, including children, the aging population, increasing the proportion of people with health problems, etc.).

The most frequently falsified food products include alcoholic beverages: vodka, liquor, cognac, wine; soft drinks: natural mineral water, juice, kvass, butter, milk and canned meat; tea, coffee; chocolate, chocolate products; vegetable oil (most often olive and corn); sausages and smoked meat. In fact, this list includes almost all groups of food products.

The falsification types include: assortment, quality, quantity, cost, information, integrated, etc. All these types of falsification differ in methods of forgery: the production of substandard goods or back-yard production with marks of high quality; production of goods with illegal use of trademark or service mark; forgery of low-grade goods under a first-class using a variety of labels and emblems; alteration of an existing product by giving it new properties and qualities, etc.

The stores can often offer fake foods: the packaging and its inside have different content. There is - cheating of buyers. How can we bring producer to responsibility for fraud? There is the concept of "Cost falsification": consumer fraud by selling low-quality goods at prices of high quality goods or goods with lower dimensional characteristics by costs of goods of large size. This is the most common type of tampering. This type of falsification does negligible harm to human health.

There were registered deaths from the consumption of fake vodka or damaged cans.

There is a fake label. But many manufacturers often change the labels to prevent this kind of forgery.

Many manufacturers are misleading buyer by making products from genetically modified raw materials.

The addition of water, the consumption of cheaper components instead of more expensive ones, partial replacement of the natural product simulator, addition or complete replacement of product supplements, the introduction of various food additives, the introduction of preservatives, antioxidants, antibiotics without their guidance on the labeling of goods - that's a little of how consumer fraud occurs.

The analysis of the sources on this issue has subject

showed that the criminal law in Kazakhstan does not contain legal norms which directly bring liability for falsification of goods and it does not define the concept of falsification.

The concept of "crimes in the sphere of economic activity" is relatively new, as to the science and practice it has entered with the adoption of a new penal code and today it is the title of chapter 7 of the Criminal Code, which includes offenses based on the use of economic instruments and official position of the subject crime. /5 /

Depending on which aspect has a prevailing value we underline property (against property) crimes and abuses committed in the sphere of economic activity. In general, they should be named, as noticed in the 20-ies of the last century A. A.Piontkovsky as "economic crimes" or "crimes violating economic relations." / 6 /

Having analysed the literature, the concept of "falsification" and "counterfeiting" should be regarded as procedural categories based on two criteria: specific, reflecting the internal specific content of these phenomena, and legal, involving a certain form of application of these concepts in the law.

According to scientists, the essence of falsification is laid in fraud, which is used for the acquisition of another property. False pretense in this case can be attributed to the following human activities, namely:

- Active act, the act of deliberate distortion of reality through intentional deception of the buyer, aimed at the deliberate misleading him about the characteristics of the goods;

- Passive inaction, reflected in the fact that the offender is willfully silent about the true characteristics of the goods, which he was obliged to inform, thereby misleading the victim. / 6 /

From the above it follows that success in solving crimes related to falsification of goods depends on competent and operational investigative actions. In this connection it is necessary to improve the forensic tools and methods of detection and investigation of these crimes.

We require evidence-based recommendations for the ways of investigation of designated crimes.

It should have a clear definition of what is falsified and counterfeit goods or products, as well as criteria for the classification of the objects to the data object classes, and finally, methods of product identification. It is also necessary to clearly define the concept of identification as product certification is understood completely different than in forensic studies.

It is important to note that modern technology producing food products on the one hand and falsification and counterfeiting of products on the other hand, require new approaches in the expert studies.

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