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Driven to Death: a Chinese Case Study on the Counterfeiting of Automotive Components

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Abstract

Unlike other counterfeit products, automotive components are hidden from view and, at least by the lay person, little understood. While the potential scale, scope and impact of the problem is vast, knowledge of this illicit trade is limited. In seeking to contribute to the existing literature on the counterfeiting of auto components, this article focuses on China, a major and growing economy with an expanding vehicle market, a ready internal market for counterfeits and a frequently identified source country of counterfeit goods. Rested upon empirical data from published court judgments in China and open source materials, this article critically explores the counterfeiting of motor vehicle parts inside the country, from manufacture to sale, including identifying the parties involved in the illegitimate business, the counterfeiting process and what motivates the players to engage in it, to gain insights into the social organisation of the illicit trade. Our findings suggest that the trade in counterfeit automotive components does not appear robust from an organisational viewpoint, which tends to be carried out by individuals on the basis of necessity and opportunity rather than authority and formal rationality. The article's findings forge a link between counterfeiting and social inequality and help argue that given the current socio-economic settings and a booming market of used vehicles, the dirty economy is likely to persist. Furthermore, as the empirical data shows, currently, the nature of the trade in dangerous counterfeit goods is not duly recognised in law enforcement and legal practices.

Keywords Automotive components · Counterfeiting · Organised crime · China

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Introduction

In today's globalised market, it is difficult to be sure exactly where the products we buy have come from. Unlike everyday consumer products, we are not so familiar with certain types of goods, such as car parts. We might not even know what a brake pad looks like, few of us would ask the origin of the parts fitted into our cars, and we tend to assume that they are legitimate and fit for purpose. The fact is that, like other consumer goods, automotive components may be counterfeit, and counterfeits may be sub-standard and dangerous. While fake vehicle components are safety-critical, and potentially deadly, our knowledge about their origins and market is limited due to a lack of research.

In the late 1990s, the motor industry estimated that the losses from the sale of counterfeit parts were US\$12 billion in the USA and Europe only (OECD, 1998). More recent journalistic information suggests that the illicit trade has been increasing (e.g. Aftermarket News, 2020; Guardian, 2019; Telegraph, 2018). Huge quantities of counterfeit vehicle products have been intercepted at the European Union (EU)'s freight terminals and border crossings. Inside the EU, over €2 billion are lost every year in the market to counterfeit tyres and batteries alone, and that possibly one in five spare or replacement vehicle parts purchased via the Internet is counterfeit (Telegraph, 2018; UK Government, 2018). In the UK, in 2016, tens of thousands of fake car parts, including 250 Audi and Volkswagen radiator grills, were seized in Bradford, and this may be only the tip of the iceberg (City of London Police, 2017; Financial Times, 2017; Telegraph & Argus, 2017). While the Trading Standards Institute has claimed that the actual scale of automotive component counterfeiting in Britain is unknown (The Telegraph, 2018), steps have more recently been taken to raise awareness of the danger of counterfeit parts (IP Crime Group, 2020).

The counterfeit parts trade is recognised to be cross-national (Lewis, 2009; Phillips, 2005; Yar, 2005). In the UK in November 2017, a man in Brent, Greater London, was sentenced for buying and selling online counterfeit car parts from China (Trading Standards UK, 2017). Indeed, China has been cited as the major source of counterfeit auto parts (OECD/EUIPO, 2018), although this illegal trade is also linked to other Asian regions (see Hindustan Times, 2010; The Economic Times, 2020), and several countries in South America and South Africa have been identified as 'newcomers' (OECD & European Union Intellectual Property Office, 2019; Telegraph, 2018). The Chinese news media do not shy away from reporting counterfeiting incidents as the dark side of the country's international trade. China News (2016), for example, reported that car parts were among the commodities frequently counterfeited for exportation. In a six-month period from January to June in 2011, counterfeit car components, along with fake mobile phone accessories, worth of more than RMB one million (slightly over US\$155,000) if they were genuine, were seized in *Guangdong*, including 250 boxes of Chevrolet parts marked with 'Made in USA' and 25 boxes of 'Nissan' piston rings (ifeng News, 2016).

The illicit trade may be deadly: counterfeit automotive components are typically inferior (Yar, 2005). The use of fake parts may damage or destroy the performance of a motor vehicle and lead to serious safety consequences (Aftermarket News, 2020). According to Interpol (2014), as many as 45 per cent of road fatalities in Oman in 2012 were attributed to counterfeit spare parts. Telegraph (2018), quoting the World Health Organisation, reported that in 2017, 36,000 fatalities and 1.5 million injuries were linked to defective counterfeit parts. In India, 20 per cent of all road accidents may be attributed to fake vehicle components (Economic Times, 2020).

Despite media reporting and government warnings (see UK Government, 2018), academic research is scarce in this area with perhaps only one exception. Yar (2005), noting the neglect of research into intellectual property (IP) crime, cited the counterfeiting of automotive components as one of the instances and highlighted the threat it poses to public health and safety. The study went further to expound the developments in legislation, law enforcement and technological innovation to respond to the problem and, finally, called for concerted attention of academics and practitioners in the fields. Today, more research has been done to bring to light IP crime and product counterfeiting in particular. However, there are remaining questions, including how is the illicit trade organised? Who are counterfeiters? With regard to cross-national transactions, when, where and how is the demand-supply link forged? What has been done to advance control and prevention of the problem? Answers to these questions are salient as they help extrapolate the nature, scale and trend of the counterfeiting trade to inform policymaking and enforcement practices. This study aims to search evidence to answer some of these questions, by examining the counterfeiting of automotive components in China—a major supplier of counterfeits (Phillips, 2005)—to gain an insight into the ‘multimillion-pound globalised business’ (UK Government, 2018).

This article has six sections. Following the introduction and the methodology, the article presents the Chinese case study in three sections, to explore the nature and social organisation of the trade in counterfeit automotive components, the pertinent laws and law enforcement responses. The final section concludes the article and argues that for dangerous counterfeit goods, such as fake vehicle components, emphasis should be placed on the potential serious harm that the counterfeiting trade poses to individuals and society. It calls for further research to dig out more pieces for the jigsaw puzzle and find better solutions to this social and economic malady.

Methods and Data

The research used a mixed method approach, while empirical data was drawn largely from published court judgments in China. As of January 2020, 57 civil and criminal court judgments pertaining to the study were available online, including seven civil claims seeking remedies from counterfeiters involved in the trade in fake vehicle parts, and 50 criminal cases involving 85 convicted individuals and two legal persons. Judgments of 43 criminal cases were provided in full; for seven criminal appeal cases, only an abridged edition of the judgments was available, containing the concise information and the final decision. All of the judgments were read and re-read to allow several major themes to surface. In this research, secondary data was collected from a range of materials, including academic literature, official reports and open sources in both Chinese and English languages to gain a fuller and more nuanced understanding.

At this point, it would be appropriate to acknowledge the limitations of this research. The major limitation is related to the nature of court judgments in China, which are typically brief. They may not contain many details, nor legal reasoning, and the defendants' personal and background information may be missing. By extracting and disregarding all aspects of the offenders' lifeworld (including their personal qualities), other than aspects of criminality relating to the evidential base of a specific case, the variables of relationality between and among players in the business are restricted (Hobbs & Antonopoulos, 2014). Such important data would have allowed stronger and more in-depth analysis. Secondly,

the judgments were a collection of cases selectively published by the courts where the cases were heard. They may not represent all cases involving the counterfeiting of auto components. More generally, official sources and accounts in the form of court case files are the result of law enforcement activity and wider political priorities (*ibid.*) and therefore can only be regarded as snapshots of the problems. Moreover, media and other open sources should be treated with caution, too, because not only do they most often refer to those cases which were dealt with by the authorities, thus ignoring cases of undetected counterfeit schemes, but they also tend to present the issues in a sensational and morally charged manner, which inevitably reduces the analytical value. With that said, we should emphasise that in our study, we have used media and open-source materials for the purely ‘technical’ information they provide, which assist us in making inferences about the illicit trade under investigation.

The Nature of the Counterfeit Auto Component Trade in China

Although as aforementioned China is currently identified as a source of internationally traded counterfeit car parts, the origin of the illegitimate business in the country has roots in the mid-1990s when its automobile trade started booming. Ever since, with a fast-growing economy and a huge population, China’s own vehicle market has been flourishing. In this surging market, imported brands are most popular but pricy for lower-income consumers who usually have to save up to own branded foreign cars or ‘settle’ for used cars (see McKinsey & Co., 2019). For some, there are consumption desires on the one hand and purchasing power on the other. Consequently, cheaper substitutes are demanded, and a market for the fakes started to emerge.

In the current study, mainly foreign brand name automotive parts are targeted in the counterfeiting business, among which the most frequently copied brands are VW, MG/ACDelco, BMW, Mercedes Benz, Hyundai/Kia, Toyota, Nissan and Honda. Copies of brake pads of Porsche, Audi, Land Rover and other brand name cars also frequently appeared in the court judgments, and most commonly counterfeited parts and accessories included bumpers, windscreens blades, antifreeze, engine oil, all kinds of filters, clutches, paddles, suspensions, tyres, mirrors, lights, brake pads, brake discs, seat belts and air bags.

In the Chinese automotive trade, legitimate components are called *yuan-jian* (literally, ‘original items’) while counterfeit parts can be broadly divided into two categories: unauthorised genuine parts and the copies of branded parts. The unauthorised genuine parts become available where the manufacturer, authorised by the brand owner for production, sells the additional genuine parts that they produced, which are called *fu-chang-jian* (literally, ‘supplementary factory-manufactured items’), also known as ‘grey market goods’. Although these *fu-chang-jian* are identical to original parts and meet the standards of brand owners, they are unauthorised, hence illegitimate and, strictly speaking, ‘counterfeit’ (Yantai Minggui Automotive Parts Company, 2019). What is confusing, though, is that in the Chinese automotive industry, the term *fu-chang-jian* has also been used to refer to legitimate substitutes. Article 30 of the *Ministry of Transport Regulation of Managing Motor Vehicle Maintenance and Repairs* 2005 (revised in 2019; hereafter, ‘Regulation 2005’ or ‘the Regulation’), while emphasising the prohibition of using counterfeit and substandard parts, allows substitutes of original brand name parts, provided that *fu-chang-jian* meet the same quality standard as the original parts. Needless to say, the regulation creates loopholes in practice.

As to nature and quality, *fu-chang-jian* vary. Some of them are produced by legitimate manufacturers, have their own brand names and meet all safety standards, thereby complying with Regulation 2005. Some other *fu-chang-jian* are unauthorised substitutes of original brand name parts, with the brand owners' product identifiable marks removed to take advantage of the Regulation. Although the latter are illegitimate, they tend not to cause safety concerns. What are egregious are the copies of branded parts, which are also *fu-chang-jian* but deliberately manufactured fakes and, shockingly, represent more than 80 per cent of substitutes of original parts (CNTV, 2011; Jinling News, 2016). Past research suggested that counterfeits were often manufactured from substandard materials, not subject to safety testing, and were therefore liable to catastrophic failure (Yar, 2005). This is confirmed in the current study, and the judgments show that *fu-chang-jian* are commonly associated with cheap, substandard counterfeits; however, because they can be legitimate as far as Regulation 2005 is concerned, sellers of counterfeit parts often openly claimed that they were selling *fu-chang-jian* as cheaper substitutes of genuine parts.

The judgments reveal several characteristics of the auto part markets within China. First, unsurprisingly, there is considerable price discrepancy between the original brand name parts and their corresponding supplementary factory-manufactured substitutes, even if the two types of products meet the same quality standards or are identical (see also Shenzhen Commercial Daily, 2004). Second, in the strict counterfeiting context, the quality of counterfeit goods varies in terms of usefulness, workmanship and the level of authenticity (Antonopoulos et al., 2018). Counterfeit auto parts are no exception. As they are made for illicit gain, product quality is not usually a concern in production. Unsurprisingly, *fu-chang-jian* are typically substandard, but for marketability, sometimes copies are made to look so authentic that are hard to distinguish from the genuine, and there are obvious fakes.

Intriguingly, brand owners' control over their genuine parts seems to have created high demand for substitutes and hence the market for cheaper copies. This is consistent with information drawn from open sources, suggesting that main dealers are commonly subject to strict contractual obligations to sell only original parts; thus, *yuan-jian* can only be obtained from vehicle manufacturers and main dealers. This has created monopoly, rendered high price for consumers and led to a demand for the counterfeits (see Shen et al., 2012).

Organisation of the Counterfeit Auto Component Trade

The judgment data offers several insights into the illicit trade and, in particular, the counterfeiting process, and those involved in it as Table 1 illustrates.

The judgments show that all of the defendants in the civil cases were involved in the *sale* of counterfeit auto parts. The civil cases were follow-up actions taken by the victims against the defendants whose involvement in counterfeiting had been proven and who had already received either criminal or administrative sanctions. Of the 43 criminal cases, 39 involved defendants who were convicted of the sale of counterfeit auto components; in only four cases, the courts found the defendants engaged in the manufacture of counterfeit vehicle parts. In this sample, the information on the manufacture phase of the counterfeiting process is constrained but offers an interesting insight.

Table 1 Organisation of the counterfeiting business

Form of organisation	Civil cases (n=7)	Criminal cases (n=43) ²	Total
Individual	5 ¹	15	20
Informal partnership (2–4 partners)	-	24	24
Small private company	2	4 ³	6

Notes:

¹The individual was defendant in five virtually identical civil cases, against whom civil remedies were sought for trademark right violation

²43 judgments were published in full

³Legal persons in two cases were found guilty. In the other two cases, it was the individuals who were convicted for their personal engagement in counterfeiting

The Process of Counterfeiting Automotive Components

The empirical data here suggests that the manufacture of auto components is often conducted by one or a few key individuals, but small businesses may be set up for the purpose of counterfeiting. In one of the cases, a man rented two warehouses to run ‘underground’ workshops and employed one manager for each workshop and nine workers in total to make counterfeit NGK spark plugs and ‘Toyota parts’, of which the market value, as if they were genuine, was around RMB 253,854 (around US\$40,000).

The counterfeiting production may be carried out by individuals who run otherwise legitimate businesses. A man in our sample organised the production of counterfeit VW oil sumps and lights in the rented business premises where he was operating an auto component store. Along with the legitimate trade, he purchased unbranded products, fake labels and packaging materials and had the fake ‘end products’ produced for sale, along with genuine VW components. In a 2018 case in *Ji’nan*, the defendant made copies of Kia suspension arms and ball joints at his legally registered vehicle maintenance workshop for a period of two years and achieved a profit margin of 13–15 per cent from selling the fakes.

The scale of counterfeiting production varies. One judgment reported that the defendant—a wholesaler of automotive parts in *Shandong*—obtained fake brand name brake pads from local manufacturers and also suppliers in a neighbouring province and then completed the process at their business premises. What is puzzling is that the manufacturers, which supplied the auto parts to the defendant in this case, were unknown. Two major reasons may explain this. One is that the investigations of these incidents were not carried out thoroughly to allow all of those who were liable of making counterfeits to be identified and held accountable. This could be a result of corruption, with officials turning a blind eye to the long-lasting problem (see Shen et al., 2012). It is also possible that the dependent purchased unbranded legitimate parts to ‘make’ copies of brand name goods.

Although much more needs to be discovered about how the production of counterfeit automotive components is organised, the judgment data reveals some details. For example, it shows that low-tech, manual production is pervasive in the counterfeiting industry and that barriers to entering the illicit trade are low. Generally, low-cost production contributes to the increased prevalence of counterfeiting (Hopkins et al., 2003). However, in the judgments, sometimes the production of counterfeit auto components was more sophisticated, involving more advanced machinery, larger volumes of goods, better organisation and even

cross-border communications. In addition, the judgment data confirms absence of quality control in any event of counterfeiting business.

In relation to production of counterfeit goods, past research indicated that outsourcing and original equipment manufacturer (OEM) may be linked with the transnational counterfeiting business (see Antonopoulos et al., 2018; Phillips, 2005). Open-source data drawn in this study suggests that OEM is common in the automotive trade (e.g. Aftermarket News, 2020), and the business model may afford opportunities to counterfeiters where production is sub-contracted. In February 2014, Aston Martin recalled 17,000 cars over possible defective parts, following the discovery that a Chinese sub-supplier was allegedly using counterfeit plastic material in part of the accelerator pedal (BBC, 2014). Notably, OEM did not appear in any reported cases in the current study.

Compared with production, counterfeiters seemed to be more frequently caught and prosecuted for the selling of counterfeits, according to the judgments, from which several insights may be drawn. First, the copies of brand name parts were often sold in independent vehicle part stores, indoor marketplaces designated for auto component dealers and online platforms. It was not uncommon for individual counterfeiters to operate in private dwellings or commercial premises, which were typically basements or warehouses, and sell fake parts on the Internet. A man in a *Guangdong* case admitted that he had earned around RMB 120,000 (approx. US\$18,600) gross income from selling counterfeit Toyota parts via QQ—China's equivalence to WhatsApp—during a five-month period between March and August 2014. There were defendants who purchased fake parts online and sold them offline.

Second, the sale of counterfeit auto components was carried out as if it was legitimate where sellers traded in both genuine and fake parts. In a *Harbin* case, the auto part store dealt with only Hyundai parts, of which the majority were genuine, with a small number of fakes, and it was operated like a usual, legitimate private enterprise, as one of the witnesses depicted in the judgment:

... In our company, Pang Xianwu was the boss... Xu Chunyan was the executive manager. He was in charge when Pang was not around. Xiao Moyi, Li and I were salesmen. Hu was the accountant... Xiao Mojia was the warehouse handler and also worked at the counter. A transaction usually started when a customer came asking for quotes of the parts wanted, a salesman would look up the figures in the computer and give the buyer the quotes, with several options. Once the customer decided what to buy... and paid the cashier. The warehouse handler then went to collect the parts or packed them later for delivery.

In this case, the parts were sold mainly to individual consumers, and the business kept no supply and sales records. This is not atypical. In the reported cases, sales records, invoices, receipts and any other form of bookkeeping were hardly found. In several cases, the seemingly occasional, opportunistic dealers of fake parts claimed that their counterfeits were from the mobile salespeople who peddled from door to door and could not be traced. The findings confirm prior research on product counterfeiting in China (see Shen et al., 2012; Shen 2018) and explain, in part, why little information is available about manufacturers and suppliers of counterfeit goods.

Third, it is difficult to gauge how much counterfeiters gain from the illicit trade given the limited information available. The judgments often provided only the sales figures and the estimated market value of fake parts to reason the sentencing decision-making, according to which the average market value of the fake brand name auto parts, if sold as the genuine ones, ranged from round RMB 7,000 to over one million. In a *Ji'nan* case, the sale

of counterfeit parts reached 20 per cent profit margin. In our sample, the counterfeiting trade lasted around several months to two to three years before detection. Overall, the judgments convey an impression that the counterfeiting business in some cases is profitable but not so lucrative. Several reasons may explain this. First, like those in the legitimate trade, it may take time for a counterfeit enterprise to develop before becoming ‘flourishing’ and the ‘development progress’ may have been interrupted by the law enforcement action. Alternatively, it may be that profitability cannot be proven due to a lack of evidence, for example, unavailability of any recorded transaction details. It is also possible that some individuals are not capable of operating in marketplaces, licit or illicit, and as a result, some counterfeiting businesses may not even be sustainable, as we shall see.

With regard to distribution of fake auto parts, media attention and the automotive industry and trading platforms often intensively focus on the US markets (e.g. Aftermarket News, 2020; Automotive Logistics, 2020; Greek Reporter, 2021) although, being recognised as a major origin of the world’s counterfeits, China may have links with virtually everywhere and typically places where there are profitable markets. Britain is one of them. A Chinese source revealed that around 80 per cent of the fake auto components in the British markets came from China (Sina Finance, 2014). The UK markets for counterfeiters of car components may become even more lucrative, as Financial Times (2017) warned that Brexit triggered a great car parts race for the country that might lead to a surge of the matching counterfeiting trade. Subsequently, the British media have indicated links between China and the UK.

In one case, a 34-year-old man in Dorset was arrested in connection with the sale of China-made counterfeit airbags and other components (BBC, 2018; City of London Police, 2017). In 2019, a sole director was sentenced to a 12-month community order for breach of trademark offences relating to Audi parts, also imported from China, with a value in excess of £12,000 and proceedings were ongoing against another trader in respect of counterfeit car badges and logos (Trading Standards, 2019a, b). Relatedly, the UK Government (2018) launched a consumer-awareness campaign on the dangers of fake automotive parts. Notwithstanding the news reports and official signals, perhaps restricted by our data, the current study has not identified a clear international distribution chain between China as a sending country of fake automotive components and any specific receiving country overseas, beyond a brief reference in one judgment, noting that a legitimate private company began engaging in manufacturing counterfeit car parts and had attempted to sell the fakes overseas. The follow-up question is that in this seemingly organised business practice, who are the players?

Key Players of the Fake Auto Part Business

The open-source data (e.g. CNTV, 2011; Sina Finance, 2014; Yantai Minggui Automotive Parts Company, 2020) confirms that sellers of counterfeit auto parts—wholesalers and retailers—often trade counterfeits along with legitimate products and within the confines of their legal business. Unsurprisingly, some garage owners are users of fake parts and thus operate as buyers and sellers, but what is astonishing is that some main dealers are also involved in the selling of counterfeits in providing maintenance and repair services on behalf of the manufacturers of brand name vehicles. In Table 1, in 24 cases, the convicted counterfeiters were co-offenders and business partners in the illicit trade, and 20 cases involved individuals who acted alone or were primary organisers of the sale of fake vehicle parts. The criminal court judgments offer some nuances about the counterfeiters.

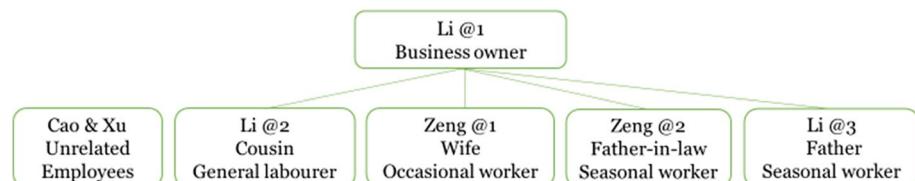
Our analysis first suggests that the convicted individual counterfeiters were mainly males and typically youths in their twenties and thirties. Two defendants were only 17 when entering the illicit business. Nine convicted defendants were women. The individual counterfeiters commonly had only junior middle school qualification (a basic education) and some were undereducated. The vast majority of the individual counterfeiters were first time offenders, with no previous convictions, nor a record of any other form of wrongdoing. The judgment data does not reveal any sophisticated organised criminal groups—the ‘lion kings’—as suggested in the existing literature (e.g. Phillips, 2005).

In the cases involving co-offenders, the ‘business partners’ were frequently family members, including married or intimate couples, siblings and their spouses, parents (or in-laws) and children and acquaintances from the same hometown. Chart 1, which was drawn based on a 2015 judgment, offers an illustration. In this *Harbin* case, family man Li @1 was the owner of a legitimate business that traded in both genuine and counterfeit auto parts. He hired only two unrelated employees and paid his cousin as a general labourer ‘doing anything and everything’ at his automotive part store. His wife ‘occasionally helped with checking delivery notes, while having an eye on their young kids’. His father and father-in-law were farmers who came to the city to stay with Li@1’s family in the off-season. Li@1’s wife and older relatives claimed to ‘know nothing about auto parts’ and mainly helped with general housekeeping, stock checking, packing and delivery.

The judgments show that the counterfeiters tended to be sole traders and informal partnerships, and family-run small enterprises were typical. In six cases involving limited companies, the shareholders all appeared to be family members and relatives. A number of key players in the illicit trade are identified as follows.

Manufacturers It is not difficult for individuals to enter the counterfeiting industry as manufacturers, as the illegitimate business does not require substantial start-up capital (Antonopoulos et al., 2018). In one judgment, Liu—a 31-year-old man who had only a primary school education and was the main breadwinner of an impoverished family—managed in an eight-month period of time to set up counterfeiting workshops in two locations in *Foshan* city, making and selling counterfeit parts. Counterfeiting production seemed to be much easier for individuals who act alone on a small scale within the legitimate businesses.

Wholesalers The wholesalers of counterfeit parts in this sample were loosely organised individuals who commonly approached automotive businesses to sell the fakes. In a



Note: Cao, Xu, Li and Zeng are surnames. The judgment partially anonymised the individuals by using pseudonyms that indicate kinship. In Chart 1, @1, 2, and 3 are used to present the parties involved in the case, with whom the business owner was related in the extended family.

Chart 1 The owner-worker relationships in a counterfeiting business. Note: Cao, Xu, Li and Zeng are surnames. The judgment partially anonymised the individuals by using pseudonyms that indicate kinship. In Chart 1, @1, 2, and 3 are used to present the parties involved in the case, with whom the business owner was related in the extended family

Shenyang case, the family business was run by a married couple who employed the husband's sister and the wife's brother. The 'gang of four' mixed genuine and fake goods and sold them to more than 60 automotive manufacturers and vehicle maintenance businesses in their region. Wholesalers of fake auto parts could be companies as well.

Retailers In the judgments, the counterfeit vehicle components were purchased from manufacturers in *Jiangsu*, *Zhejiang* and *Shandong* provinces, door-to-door salespersons, e-commerce platforms and then sold in small retailer shops and by stallholders in the auto component markets (*chi-pe-i-cheng*) who were commonly opportunistic counterfeitors. One judgment paraphrased the confession that the defendant, a business owner, made at the police interview:

Wu [the defendant] started to make copies of VW oil sumps in 2017 after he was approached by a stranger who came to his workshop to sell unbranded oil sumps. Wu bought these parts and organised to have them packaged as if they were genuine. He then employed his cousin to sell the fakes in his auto component retailer store.

Counterfeiting is commonly profit driven. However, sometimes, engaging in the selling of counterfeits may not guarantee even a sustainable life. In 2018, a court in *Fuzhou*, *Fujian* province, convicted two defendants, father and son, who each ran an automotive part store. The son's shop could have sales income of around RMB 10,000 (approx. US\$1,550) per month while the gross monthly income in the father's store was somewhere between RMB 1,000–5,000. According to their defence lawyers, these auto component stores provided the sole source of income for the extended family of two households, which was always in financial difficulty as it had elderly family members and a new-born baby to be cared for; and, the hardship was intensified after the family's two only breadwinners were held in custody. Likewise, in a *Guangzhou* case in the same year, the defendant, a lone counterfeiter, made a living out of selling fake parts to support his entire family, including his wife, two children and widowed mother.

It seems that the individuals often drifted into, rather than consciously entered, the counterfeit trade where opportunities arose. In a 2014 case handled by *Zhejiang Ruian People's Court*, the once legitimate automotive company turned to trading in counterfeit parts in response to the shrinking market one year after it was formed. The shareholders, who were relatives of an extended family, decided to start the counterfeiting business for the company's survival. This supports the journalistic information, suggesting that counterfeit vehicle components were found not only in small roadside garages but also in larger legitimate companies (*Shenzhen Commercial Daily*, 2004).

In the judgments, although all counterfeitors aimed at illicit gain, their reasons for engaging in the illegitimate trade vary. The data in this study suggests that counterfeitors are commonly amateur, opportunistic, individual lawbreakers, for whom the trade in counterfeit goods was an alternative or additional money-making method. Undeniably, there are more sophisticated professional players in the counterfeiting world. However, without sufficient reliable information, it is hard to figure out the plausibility of larger-scale counterfeitors, whose invisibility may be a result of the 'protection umbrella' provided by powerful governmental officials in the context of corruption permeating Chinese society, business and politics. At the lower levels, as we shall see, the counterfeiting of automotive components is typically punished as a form of trademark right violations. For individuals who are short of legitimate opportunities, it is not too difficult to tip the balance towards risk taking.

The Laws, Application of Law and Law Enforcement

There are administrative, civil and criminal measures against product counterfeiting in China. Regarding auto component counterfeiting, the *Trademark Law* 1983 (revised in 2019; hereafter ‘*Trademark Law*’) provides the legal basis for the civil and administrative regimes. Article 57 of the *Trademark Law* affords protection of the exclusive rights to owners of registered trademarks, by specifying various forms of infringement. For example, it prohibits, without the owner’s permission, using a mark that is identical or similar to a registered trademark in the same or a similar type of goods. Under the civil regime, the law encourages the parties to first make an effort to settle their disputes. In practice, as the judgments show, trademark owners tended to bring a civil claim against infringers after their administrative or criminal case ended. In the popular media, the criminal regime appears to be a major measure in tackling the counterfeiting of automotive parts.

Regarding the administrative regime, the Administration for Industry and Commerce (AIC) is the regulatory body for the protection of trademark rights, with branches at all levels across the country. The government agency is not only authorised to handle allegations of trademark right infringement but also imposed an obligation to investigate counterfeiting incidents and impose administrative sanctions, including a fine of up to RMB 250,000 (approx. US\$38,800). Where an alleged infringement is considered to amount to crime, the AIC is required to hand it over to the police. The evidence here supports Roberts (2002) who claimed that the AIC local branches were operating.

The judgment data makes it clear that the criminal courts commonly rely on Articles 213 and 214 of the *Chinese Criminal Law* 1997 (the Tenth Amendment; hereafter, ‘CCL 1997’), which specifically deal with offences in relation to trademark infringement, to handle prosecutions for the counterfeiting of automotive components. Article 213 provides:

Any person who is convicted of the offence of illegitimate use of others’ trademarks is punishable with a fine alone or concurrently with criminal detention; less than three years’ imprisonment if the circumstances are “*serious*”; or, three and up to seven years’ imprisonment if the circumstances are “*very serious*”.

The same range of sanctions are available for an offence under Article 214, which criminalises anyone who sells counterfeit products and violates others’ trademark rights where the value of illicit goods amounts to *relatively large* or *large*. Over the years, the Supreme People’s Court (SPC), the Supreme People’s Procuratorate (SPP) and the Ministry of Public Security (MPS) have issued a series of official guidelines for the application of the criminal law. For example, in 2004, SPC and SPP jointly issued an ‘Opinion’ that offers some details for the law:

... anyone who sells goods involving trademark infringement, if the value of the goods exceeds RMB 50,000 which amounts to *relatively large*, is punishable with a fine alone or concurrently with criminal detention, or less than three years’ imprisonment; if the value of the goods exceeds RMB 250,000 which amounts to *large*...

Theoretically, though, Articles 140 and 141 of the CCL 1997, which criminalise manufacture or selling of counterfeit and substandard goods, may be applicable to those involved in the counterfeiting of automotive parts. Anyone who commits the Article 140 or 141 offence is punishable with severe sanctions, including up to 15 years’ imprisonment or a life sentence. The maximum sentence for a convicted offender under Article 140 or 141 is much higher than that of a trademark related offence. It is, therefore, reasonable to say that

the Chinese legal framework is readily available and should be able to respond to product counterfeiting (Chang, 2014) although, admittedly, there are loopholes in the laws and arbitrariness in law enforcement (Chow, 2004; Fleming, 2014; Sonmez & Yang, 2007). Our analysis offers several important findings on how the illicit trade is tackled in legal practice.

First, counterfeiting operations may be detected through several channels, including routine inspections conducted by the local AIC branches and individuals' complaints made to the authorities. According to China Consumers Newspaper (2008), over 90 per cent of the trademark infringement incidents were dealt with by the local AIC. It is also not uncommon for the trademark owners to hire IP consultancies to carry out initial inquiries where suspicions arise. Sometimes, counterfeiting activities may surface in an unrelated investigation conducted by a law enforcement agency, such as the local quality control authority or the police, which may be followed up. Secondary data indicates that, from time to time, there are police crackdowns on product counterfeiting. 'Hurricane 2019' and 'Tying the Net 2019' in *Guangdong*, for example, specifically targeted the counterfeiting of automotive components, during which the general public were encouraged to report suspicion of counterfeiting incidents (Guangzhou Public Security Bureau, 2019; Sina News, 2019; Xinhua News, 2019). The problem, however, is that the existing anti-counterfeiting measures are typically reactive, unsystematic, and their effectiveness is hard to measure.

Second, in the judgments, all of the criminal defendants were prosecuted for trademark violations pursuant to Articles 213 and/or 214 and convicted accordingly, even if the legal documents frequently recorded the accused admitting that the counterfeits in issue were substandard. Logically, given the safety concerns, individuals accused of dealing with fake vehicle components should have been prosecuted for counterfeiting under Articles 140 and/or 141 which place particular emphasis on product quality and consumer safety. Several reasons explain the current legal practice.

The first reason is technical. The law is not clear which section should apply where there are competing legal provisions. So far, no consensus has been reached. Some legal scholars argue that specific rules must take priority over general principles, while for others, the law that imposes harsher sanctions should prevail (Huang, 2017; Zhang, 2019). In regard to the counterfeiting of auto parts, the former view is commonly accepted. Accordingly, Articles 213 and 214, which specifically deal with counterfeit goods involving trademark infringement, take priority over the more general rules under Articles 140 and 141 which have broader application and can be employed to deal with cases involving all counterfeit and substandard goods. Therefore, those involved in activities that amount to trademark infringement tend to be charged pursuant to Article 213 or 214 or both, despite that this would lead to milder punishment that may not be commensurate with the harm that the illicit trade poses to the public and society.

The second reason is related to how counterfeiting incidents are detected. The judgments suggest that rights owners may choose to trigger the criminal regime by reporting others who have allegedly infringed their trademark rights to the authorities, and their cases would be filed, investigated and prosecuted accordingly as trademark rights infringements (HFG Law & Intellectual Property, 2020). For the procuratorate, compared with the offence of making or selling of inferior counterfeit goods under Article 140 or 141, it is easier to prove trademark violations, with the victim's full support. Usually, the trademark owner may receive a decent amount of compensation as a result of successful victim-offender reconciliation, as part of the criminal proceeding, as the judgment show. In addition, in recent years, China has placed greater emphasis on strengthening IP protection to show its commitments to the international community (Huang & Smith, 2018). One illustration is that in 2017, a third of the SPC guideline cases were IP related. In this context,

Table 2 Legal reasoning in the judgments of cases involving fake vehicle parts ($n=50$)

Legal reasoning (judicial comments)	Number of cases
No specific reasoning, only the court's brief findings, application of law and decision	41
Noting the counterfeit goods are auto components hence safety concerns and harm	4
Emphasising the protection of IP rights	2
Noting trademark owners as the victims of crime	1
Emphasising the protection of consumer rights	1
Emphasising profit driven as the nature of the crime	1
Total	50

Table 3 Sentencing outcomes of the auto part counterfeiting cases ($n=43$)¹

Sentencing outcomes	Number of cases	Percentage (%)
Fine only	4	9
Suspended imprisonment & fine	22	51
Prison sentences & suspended imprisonment	3 ²	7
Prison sentences	14	33
Total	43	100

Notes:

¹Seven appeal cases are excluded of which judgments were not available in full and the sentencing results were not available

²The co-defendants in these cases received either prison sentences or suspended imprisonment

practising IP laws has become increasingly trendy for legal professionals in China; like lawyers, prosecutors often prefer to handle IP related offences to conventional crimes.

Furthermore, the judgment data suggests that, unlike product counterfeiting involving foods, alcohol and tobacco (Shen, 2018; Shen et al., 2012; Shen & Antonopoulos, 2017), the true nature and potential harm of trading in fake auto components are not widely recognised. Table 2 illustrates the legal reasoning provided by the courts, which gives a glimpse of how the judges perceive the nature of the illicit business.

Table 2 shows that the judgments typically provided only brief description of the facts, with key evidence, specific laws applied and the judicial decisions. The true nature of automobile component counterfeiting was rarely addressed. This is not unusual. In China, judges are not required to detail legal reasoning. However, in four judgments, it was pointed out that the counterfeit goods were automotive components, which might cause serious harm, and accordingly, imprisonment was not suspended for the convicted offenders. In one of the four cases, the court stressed that prison sentence must be imposed considering the potential harm inherently associated with fake auto parts. In similar cases, though, non-custodial sentences were common, as Table 3 shows. It seems that how judges perceive the nature of the illicit trade has had an impact on sentencing outcomes.

Table 3 exhibits the outcomes of the 43 criminal cases: in nearly two-thirds of the cases, the counterfeiters received non-custodial sentences; in three cases, some co-offenders had their prison sentences suspended. Custodial sentences were imposed on the sole and

co-defendants in only 14 cases (33%). This finding somehow supports prior research in that punishment is inadequate for product counterfeiting in China (see Chow, 2004; Fleming, 2014; Sonmez & Yang, 2007), considering the seriousness of the crime and the punitive nature of China's criminal justice system (see Trevaskes, 2010). Notably, it was the procuratorate that prosecuted the defendants who were accused of engaging in the counterfeiting of automotive parts under the trademark law. In practice, this legal approach was accepted by the courts and, of course, was not disputed by the defence lawyers.

Furthermore, in this study, we have identified 'restorative justice' in judicial disposals in two cases, in which the victim-offender reconciliation enabled the counterfeiters to make apologies and pay compensations to the trademark owners. In a 2018 case heard in Guiyang Intermediate People's Court, 'the defendant paid RMB 130,000 (approx. US\$20,200) to the IP owner and received their pardon'. As a result, the counterfeiter received a non-custodial sentence and a relatively smaller fine. In other judgments, 'paying compensation', 'victim's forgiveness' and 'successful victim-offender reconciliation' were noted as influential factors when non-custodial sentences were considered. In China, restorative measures, including the offender-victim reconciliation, are usually only allowed in less serious criminal cases (Shen & Antonopoulos, 2013). By allowing this judicial disposal, the courts seemed to perceive vehicle component counterfeiting as a less serious crime.

Discussion and Conclusions

This article has examined the counterfeiting of automotive components in China as a single case study to gain insights into the illicit business and raise awareness of its nature and harm. Constrained by the empirical data which was drawn primarily from the published court judgments and the secondary data available in the public domain, the research, as anticipated, has answered some of the questions raised at the outset. We are now in a position to make a number of important observations.

First, while past research has attempted to define product counterfeiting (Lai & Zai-chkowsky, 1999; Lin, 2011; McDonald & Roberts, 1994; Shen 2018; Yar, 2005), there are still gaps in our understanding. This Chinese case study has offered further knowledge: in China, the counterfeiting of automotive components is typically perceived as a trademark rights dispute or trademark rights violation at the worst. There are clearly loopholes in the application of law, and the true nature and potential harm associated with the counterfeiting business are unduly reflected in the legal practice. As we have been, in the legitimate business world, the use of vaguely defined terminology causes confusion and blurs the boundary between licit and illicit activities. The operation of OME and 'grey marketing'—involving businesses that intentionally or unintentionally breach their contractual obligations causing other parties to lose profits, brand equity or market position (Lewis, 2009; McDonald & Roberts, 1994; Zhang & Tsang, 2008)—inevitably creates an unregulated market conducive to the trade in counterfeit products.

Second, this article has provided an insight into the social organisation of the trade in counterfeit goods. Departing from the common perception that the counterfeiting business is primarily a platform for the activities of vigorous organised criminal structures (see Interpol, 2014; Union des Fabricants, 2003), our findings are consistent with views of the illicit trade, as rather less robust from an organisational viewpoint, carried out by individuals, or clusters of individuals, often with no criminal record, who assemble on the basis of necessity and opportunity rather than authority and formal rationality. This case study

has showed a mixture in the patterns of cooperation: the individuals involved in the counterfeiting industry via familial, kinship and hometown contacts, or via existing business relationships, all of which constitute facilitators of ‘borrowed loyalty’ (see van de Bunt & Kleemans, 2007; von Lampe, 2007; von Lampe & Johansen, 2004). We, however, do not deny that there may be sophisticated criminal groups operating in the counterfeiting of automotive parts who remain undetected (see Gillette, 2010; Gowers, 2006; Lowe, 2006; Phillips, 2005) but want to stress that the behaviours of opportunistic offenders—individuals, owners of small enterprises, legitimate businesses, and those loosely or randomly ‘organised’—are difficult to monitor, especially where their activities take place within the confines of, and is integrated with, their legitimate trades.

To follow this lead, we also want to acknowledge the role corruption plays in the illicit markets where larger-scale criminal players, with sufficient cash, are capable of bribing powerful officials who may happily offer protection to criminals or even join ‘the gang’, just like what happened in the horrifying case recently reported in China (e.g. Koetse, 2021; Sina Finance, 2021). ‘Underworld kingpin Zhao Fuqiang managed to turn his ‘Little Red Mansion’ into ‘a hell on earth for dozens of women who were forced into a life of sex work within his organised crime network’ in central *Shanghai*, an international cosmopolitan city. The fact that the sickening crime involved a sizeable number of high government officials is striking, and it explains how Zhao’s dirty business could exist and run for a long period. It is reasonable to believe that the top dogs in the counterfeiting world may be shielded under the protection umbrella and what are left are the marginal players, such as those we came across in this case study.

In regard to individual counterfeiters, evidence here has forged a link between counterfeiting and social inequality. In a number of cases, the counterfeiters were individuals who lacked resources and opportunities in the legitimate markets, and counterfeiting provided the only or an additional source of income for a life that they struggled to sustain. These individual counterfeiters are likely to carry on operating, despite law enforcement efforts, as long as the underlying structural problems remain in a market economy that encourages small entrepreneurs to generate incomes by all possible means (Shen et al., 2012).

Third, our case study exemplifies the idea that criminal activity and commercial activity constitute ‘half-brothers’ (van Duyne, 2005). Here, the Chinese automobile market serves as the platform and context for product counterfeiting. As aforementioned, China’s vehicle market started to flourish three decades ago. It was once fairly easily for domestic and foreign brands to get a foothold in the country’s rapidly growing automotive market, but the golden era is now over. Today, the business sector has become extremely competitive in China where, as new car sales decline, the used car market continues its upward trajectory (McKinsey & Co., 2019). Behind this shopfront, there lies an extensive industry that is not concerned only in the renewal of the fleet but also to keep older cars in circulation. As an indicative measure of the extent of this type of business, we note that there are over 12,000 automotive part and component suppliers in China, the vast majority of which are privately owned, small businesses and placed outside the networks of the large auto manufacturers and dealers that dominate the market (Pawlak & Luo, 2017). In addition to the large number of small-medium car part and component businesses, what should be added are auto repair businesses, which tend also to be privately owned and small, and each fights to get hold of an extremely small part of the market. In light of the immensely competitive environment—a ‘criminogenic setting’ (Leonard & Weber, 1970; Tremblay et al., 2001)—the purchase and use of counterfeit parts by the small enterprises in their day-to-day business constitutes an additional competitive advantage towards other similar players in the same trade.

In addition, what we have here is an exemplary ‘dirty economy’ (Ruggiero, 1996) in so far as car parts counterfeiting and legal car businesses appear to mutually benefit

and an environment in which ‘the informal tends to be absorbed into the formal and the alleged threats posed by the former tend to be turned into opportunities for the latter’ (Ruggiero, 1997: 35). For car owners with a stretched purchasing power as mentioned earlier, cheap substitutes are irresistible for keeping their cars running. In this context, there is little local pressure on the authorities to take action against physically harmful counterfeiters, such as those in the illegitimate auto industry.

One objective of this article was to raise awareness of the harm of the trade in fake automotive components. Surprisingly, in this study, we found only a handful of traffic incidents that were reportedly linked to counterfeit car parts, including an incident in *Shenzhen* (*Shenzhen Commercial Daily*, 2004) and a more recent case in *Nanjing* (*Jinling News*, 2016), both of which involved a severe road traffic accident that was attributed to the fake brake pads. Yar (2005) painfully noted that there is typically no established practice of forensic and technical examination of vehicles involved in serious accidents, through which the role of counterfeit parts could be ascertained. Due to a lack of ‘proof’, the harm of fake auto parts to public safety may be underestimated, which may have influenced how the illicit trade is perceived and hinder the effort of awareness raising.

As the article has showed, in the Chinese legal practice, the true nature of the illicit trade is rarely scrutinised, the counterfeiting of automotive components is dealt with as infringement of trademark rights, and the counterfeiters tend not to receive penalties that may deter further offending or potential offenders. Although whether or not the punishment amounts to ‘effective deterrence’ (cf. Roberts, 2002) requires a separate empirical inquiry, what can be said is that currently the penalties are not commensurate with the harm of the counterfeiting business. The truth is that the counterfeiting of auto components, although is profit-driven as product counterfeiting in generally, is potentially life-threatening and differs from the unethical business practices targeting consumers who buy fakes for image or status enhancement, such as the counterfeiting of expensive Swiss watches (Haie-Fayle & Hübner, 2007), of iPhones (Lin, 2011) and of *Jingdezhen* ‘Qing dynasty’ porcelain pots (Gillette, 2010). The current legal practice in respect of the dangerous counterfeit goods is in need of urgent review.

Finally, despite the acknowledged methodological and data-related limitations, this case study has enabled a better understanding of the counterfeiting trade and thus makes an important contribution to the international literature on product counterfeiting from the perspective of public safety. It has given us a unique opportunity to alert readers to the harm of the trade in dangerous counterfeit goods. Moreover, what has been presented in this article enables us to argue that further independent, large-scale (Yar, 2005) and thorough investigations are still required to appreciate the nature, scale and impact of the global counterfeiting trade to inform policy and practice.

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Declarations

Ethics Approval All procedures performed in studies involving human participants were in accordance with the ethical standards of the institutional and national research committee, and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards.

Conflict of Interest The authors declare no competing interests.

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