

**Guiding Case No. 23: Sun Yinshan v. Jiangning Store of Nanjing Auchan Supermarket Co., Ltd.(Sales contract dispute)**

(Issued on January 26, 2014, as adopted by the Judicial Committee of the Supreme People's Court after deliberation)

Guiding Case No. 23

**Keywords**

Civil; sales contract; food safety; compensation of ten times the money paid

**Judgment's Key Points**

Where a consumer who has purchased food not up to the food safety standards claims that the seller or producer should compensate the consumer in the amount of ten times the money paid under the Food Safety Law or compensate the consumer according to other statutory compensation standards, the people's court should support such a claim whether the consumer knew that the food was not up to the safety standards at the time of purchase.

**Relevant Legal Provisions**

Paragraph 2, Article 96 of the Food Safety Law of the People's Republic of China

**Basic Facts**

指导案例 23 号：孙银山诉南京欧尚超市有限公司江宁店买卖合同纠纷案

( 最高人民法院审判委员会讨论通过 2014 年 1 月 26 日发布 )

指导案例 23 号

**关键词**

民事 买卖合同 食品安全 十倍赔偿

**裁判要点**

消费者购买到不符合食品安全标准的食品，要求销售者或者生产者依照[食品安全法](#)规定支付价款十倍赔偿金或者依照法律规定的其他赔偿标准赔偿的，不论其购买时是否明知食品不符合安全标准，人民法院都应予以支持。

**相关法条**

《[中华人民共和国食品安全法](#)》第[九十六条](#)第二款

**基本案情**

On May 1, 2012, plaintiff Sun Yinshan purchased 15 bags of “Yutu” sausages from defendant Jiangning Store of Nanjing Auchan Supermarket Co., Ltd. (hereinafter referred to as “Auchan Supermarket Jiangning Store”), but the warranty period of 14 bags of them worth 558.6 yuan had expired. After payment to the cashier, Sun Yinshan went straight to the information desk to claim compensation. Sun Yishan filed a lawsuit in the court after negotiation failed, requiring Auchan Supermarket Jiangning Store to compensate him in the amount of 5,586 yuan, ten times the money paid for the 14 bags of sausages.

### Judgment

On September 10, 2012, the People's Court of Jiangning District, Nanjing City, Jiangsu Province issued a civil judgment (No. 646 [2012], First, Civil Division, Jiangning): Defendant Auchan Supermarket Jiangning Store should compensate plaintiff Sun Yinshan in the amount of 5,586 yuan within ten days from the effective date of this judgment. After the pronouncement of this judgment, neither of the parties appealed, and this judgment came into force.

### Judgment's Reasoning

In the effective judgment, the court held that: As for whether plaintiff Sun Yinshan was a consumer, Article 2 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests provided that: “The rights and interests of consumers who purchase and use commodities or receive services for consumption needs in everyday life shall be protected by this Law; or, if this Law is silent, be protected by other applicable laws and regulations.” Consumer was a concept as opposed to seller and producer. Whoever purchased and used commodities or received services in market transactions

2012 年 5 月 1 日，原告孙银山在被告南京欧尚超市有限公司江宁店（简称欧尚超市江宁店）购买“玉兔牌”香肠 15 包，其中价值 558.6 元的 14 包香肠已过保质期。孙银山到收银台结账后，即径直到服务台索赔，后因协商未果诉至法院，要求欧尚超市江宁店支付 14 包香肠售价十倍的赔偿金 5586 元。

### 裁判结果

江苏省南京市江宁区人民法院于 2012 年 9 月 10 日作出(2012)江宁开民初字第 646 号民事判决：被告欧尚超市江宁店于判决发生法律效力之日起 10 日内赔偿原告孙银山 5586 元。宣判后，双方当事人均未上诉，判决已发生法律效力。

### 裁判理由

法院生效裁判认为：关于原告孙银山是否属于消费者的问题。《[中华人民共和国消费者权益保护法](#)》[第二条](#)规定：“消费者为生活消费需要购买、使用商品或者接受服务，其权益受本法保护；本法未作规定的，受其他有关法律、法规保护。”消费者是相对于销售者和生产者的概念。只要在市场交易中购买、使用商品或者接受服务是为了

for personal or household needs in everyday life rather than needs of business activities or occupational activities should be determined as a consumer “for consumption needs in everyday life” regulated by the law on the protection of consumer rights and interests. In this case, neither the plaintiff nor the defendant raised any objection to the fact that Sun Yinshan purchased sausages from Auchan Supermarket Jiangning Store. It may be determined that Sun Yinshan purchased commodities and did not resell, or use in any business, the purchased sausages. Auchan Supermarket Jiangning Store failed to provide evidence to prove that Sun Yinshan's purchase of commodities was for business purposes. Sun Yinshan claimed compensation on the ground that the purchased food was beyond the warranty period, which was the plaintiff's exercise of a statutory right. Therefore, it was groundless for Auchan Supermarket Jiangning Store to argue that Sun Yinshan was not a consumer because of the plaintiff's “intentional purchase of expired commodities for compensation.”

As for whether defendant Auchan Supermarket Jiangning Store knowingly sold food not up to the food safety standards, Article 3 of the Food Safety Law of the People's Republic of China (hereinafter referred to as the “Food Safety Law”) provided that: “Food producers and traders shall, in accordance with laws, regulations, and food safety standards, conduct food production and trade activities, be responsible to the society and the general public, ensure food safety, accept social supervision, and assume social responsibilities.” According to item (8), Article 28 of this Law, food with an expired warranty period was food prohibited in production and trade. Food sellers had the statutory obligation to ensure food safety, and should sort out food not up to the safety standards in a timely manner. As a food seller, Auchan Supermarket Jiangning Store should store food according to the requirements for ensuring food safety, check the food to be sold in a timely manner, and sort out food with an expired warranty period. Auchan Supermarket Jiangning Store put

个人、家庭生活需要，而不是为了生产经营活动或者职业活动需要的，就应当认定为“为生活消费需要”的消费者，属于[消费者权益保护法](#)调整的范围。本案中，原、被告双方对孙银山从欧尚超市江宁店购买香肠这一事实不持异议，据此可以认定孙银山实施了购买商品的行为，且孙银山并未将所购香肠用于再次销售经营，欧尚超市江宁店也未提供证据证明其购买商品是为了生产经营。孙银山因购买到超过保质期的食品而索赔，属于行使法定权利。因此欧尚超市江宁店认为孙银山“买假索赔”不是消费者的抗辩理由不能成立。

关于被告欧尚超市江宁店是否属于销售明知是不符合食品安全标准食品的问题。《[中华人民共和国食品安全法](#)》（以下简称《[食品安全法](#)》）[第三条](#)规定：“食品生产经营者应当依照法律、法规和食品安全标准从事生产经营活动，对社会和公众负责，保证食品安全，接受社会监督，承担社会责任。”该法第二十八条第（八）项规定，超过保质期的食品属于禁止生产经营的食品。食品销售者负有保证食品安全的法定义务，应当对不符合安全标准的食品自行及时清理。欧尚超市江宁店作为食品销售者，应当按照保障食品安全的要求储存食品，及时检查待售食品，清理超过保质期的

“Yutu” sausages with an expired warranty period on the shelf, sold them, and, therefore, failed to fulfill its statutory obligation. It may be determined that Auchan Supermarket Jiangning Store knowingly sold food not up to the food safety standards.

As for the liabilities of defendant Auchan Supermarket Jiangning Store, paragraph 1, Article 96 of the Food Safety Law provided that: “Whoever violates this Law, causing any personal, property, or other damage, shall assume compensatory liability in accordance with the law.” Paragraph 2 thereof provided that: “In addition to claiming damages, a consumer may require the producer or the seller to compensate the consumer in the amount of ten times the money paid, if food not up to the food safety standards is produced or knowingly sold.” Where a seller knowingly sold food not up to the safety standards, a consumer may claim both damages and compensation of ten times the money paid, or only claim compensation of ten times the money paid. In this case, plaintiff Sun Yinshan only required Auchan Supermarket Jiangning Store to pay compensation of ten times the money paid, which was the result of the party's exercise of discretion regarding the party's rights and should be supported. Defendant Auchan Supermarket Jiangning Store argued that the plaintiff knowingly purchased expired food in the hope of benefiting from the defendant's errors and the compensation of ten times the money paid should not be granted. Since a consumer was entitled to compensation of ten times the money paid according to the above-mentioned legal provisions, the benefit obtained through the compensation was an interest protected by law. The law did not put any limitation on the shopping motive of a consumer. Therefore, this argument of the defendant should not be supported.

食品，但欧尚超市江宁店仍然摆放并销售货架上超过保质期的“玉兔牌”香肠，未履行法定义务，可以认定为销售明知是不符合食品安全标准的食品。

关于被告欧尚超市江宁店的责任承担问题。《[食品安全法](#)》[第九十六条](#)第一款规定：“违反本法规定，造成人身、财产或者其他损害的，依法承担赔偿责任。”第二款规定：“生产不符合食品安全标准的食品或者销售明知是不符合食品安全标准的食品，消费者除要求赔偿损失外，还可以向生产者或者销售者要求支付价款十倍的赔偿金。”当销售者销售明知是不符合安全标准的食品时，消费者可以同时主张赔偿损失和支付价款十倍的赔偿金，也可以只主张支付价款十倍的赔偿金。本案中，原告孙银山仅要求欧尚超市江宁店支付售价十倍的赔偿金，属于当事人自行处分权利的行为，应予支持。关于被告欧尚超市江宁店提出原告明知食品过期而购买，希望利用其错误谋求利益，不应予以十倍赔偿的主张，因前述法律规定消费者有权获得支付价款十倍的赔偿金，因该赔偿获得的利益属于法律应当保护的利益，且法律并未对消费者的主观购物动机作出限制性规定，故对其该项主张不予支持。