



We Knew It Was Coming: The First NFT Lawsuit is Here

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On May 12, a plaintiff sued Dapper Labs, Inc. and the CEO of Dapper Labs, alleging violation of securities laws. The plaintiff's [complaint](#) alleges Dapper Labs' platform, NBA Top Shot, sold securities when it sold non-fungible tokens (NFTs) on its platform.

On the NBA Top Shot platform, users can buy and sell NFTs associated with specific NBA video clips, called "NBA Top Shot Moments." The plaintiff asserts NBA Top Shot has sold over \$500 million worth of these tokens, which are minted by NBA Top Shot and then sold in digital packs of three varieties: common, which include NBA Top Shot Moments that have been produced over 1,000 times; rare, which includes NBA Top Shot Moments that have been produced up to 999 times; and legendary, which have been produced up to 99 times. The plaintiff also notes that NBA Top Shot Moments can be bought and sold in the secondary market from individuals. These sales take place on the NBA Top Shot platform, and, according to the complaint, Dapper Labs receives a 5% transaction fee on all transactions.

The plaintiff alleges NBA Top Shot's NFTs are digital assets that "derive their value from the success or failure of a given project, promoter, or start-up," and, therefore, they are securities which should have been registered with the Securities and Exchange Commission. (Complaint, page 2). Specifically, the plaintiff points to packaging the NBA Top Shot Moments in limited run packs and requiring all subsequent sales to be on the NBA Top Shot platform. The plaintiff also points to the transaction fee Dapper Labs receives and to issues removing funds from the platform once deposited there. The plaintiff asserts that these actions result in a product whose value rises or falls based on the actions of NBA Top Shot. Further, the plaintiff cites commentary from others who have either reviewed the platform or purchased NBA Top Shot Moments, that these NFTs are purchased by people for an investment purpose.

This was the initial shot across the bow for NFT minters and the platforms that allow secondary sales of NFTs. With limited official

guidance relating to NFTs, it is safe to say many are watching this litigation. The defendants are likely to first challenge the complaint on a procedural basis, as both defendants appear to be in Canada and may be able to argue lack of personal jurisdiction. Further, the plaintiff sued in New York state courts, and the defendants may try to “remove” the proceedings to federal court. Once procedural challenges are disposed of (and barring a settlement), this case may provide the industry guidance that is needed – we’ll certainly be watching.

If you have questions about whether your NFT is a security, “convertible virtual currency” according to FinCEN, or a commodity, please contact [Courtney Rogers Perrin](#) or any attorney with Frost Brown Todd’s [Blockchain industry team](#).

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