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NFT Lawsuits 2022 Roundup

The increased popularity of non-fungible tokens (NFTs) has potential to inspire new methods of creating and dispersing art within the digital landscape. However, with new methods of creation and dispersing art comes yet-to-be answered legal questions and litigation. The first NFT-related litigation, summarized [here](#), came with the Dapper Labs lawsuit and is now winding its way through federal court. Time will tell how the litigation around NFTs develops, but below is a summary of other recent NFT cases and the key questions they raise regarding intellectual property rights, fair use, and contracts in the digital assets space.

In May 2021, French luxury brand Hermès sued artist Mason Rothschild over the sale of Birkin Bag NFTs. In May of 2021, Rothschild launched a singular “Baby Birkin” NFT, inspired by the fashion house’s line of Birkin Bags, which have a base price of \$10,000. Noting that the NFT was a singular occurrence, Hermès did not initiate contact with the artist to complain about the use of the Birkin image. However, in November of 2021, Rothschild launched an entire collection of “MetaBirkin” NFTs on a popular NFT sales platform. This swiftly escalated into a lawsuit, where Hermès’s complaint alleges trademark infringement, false designation of origin, trademark dilution, cybersquatting, and injury to business reputation. As the litigation continues, new legal precedent will emerge as it relates to the intersection of NFT art and creative liberties, as well as the balancing of First Amendment rights and intellectual property.

In June 2021, Roc-A-Fella Records initiated a lawsuit against its co-founder Damon Dash for allegedly attempting to “mint” and sell Jay-Z’s album *Reasonable Doubt* as an NFT. Roc-A-Fella’s complaint alleges that Dash planned to sell an NFT of the *Reasonable Doubt* copyright through an auction on an NFT platform. The complaint states that the attempted sale of the album’s copyright was improper: “Dash can’t sell what he doesn’t own. By attempting such a sale, Dash has converted a corporate asset and has breached his fiduciary duties.” A federal district court in New York City ruled in favor of Roc-A-Fella and granted Roc-A-Fella a temporary

restraining order, effectively barring Dash from altering, selling, or otherwise disposing of any copyright or other property interest in *Reasonable Doubt*, including the auction of an NFT reflecting such interest.

In November 2021, production company Miramax sued director Quentin Tarantino in a California federal court, alleging breach of contract and copyright infringement. The lawsuit arises out of Tarantino's intention to auction seven "exclusive scenes" in the form of NFTs from his handwritten *Pulp Fiction* script. Miramax's complaint alleges that NFTs do not fall under Tarantino's limited contract rights for the film. Specifically, Miramax alleges that while Tarantino retains the right to "publish" pieces of the film, NFTs do not fall under that publishing umbrella. "The proposed sale of a few original script pages or scenes as an NFT is a one-time transaction, which does not constitute publication," the complaint alleges. Miramax further alleges that Tarantino's use of *Pulp Fiction* branding and imagery is likely to confuse creators and set negative precedent for other filmmakers. "Left unchecked, Tarantino's conduct could mislead others into believing Miramax is involved in his venture...[a]nd it could also mislead others into believing they have the rights to pursue similar deals or offerings, when in fact Miramax holds the rights needed to develop, market, and sell NFTs relating to its deep film library." This case is set up to evaluate what an NFT is and how it stands up against contract rights.

Nike, a global designer of sneakers, has recently found itself in the midst of NFT-related litigation. On February 4, 2022, Nike filed a trademark infringement lawsuit against StockX, the operator of an online resale platform. Nike's complaint alleges that StockX, as a recent entrant into the NFT fashion collectible market, infringed Nike's trademark rights by selling NFTs of limited-edition Nikes which include an image of the sneaker. The sneaker company further claims that "StockX has chosen to compete in the NFT market not by taking the time to develop its own intellectual property rights, but rather by blatantly freeriding, almost exclusively, on the back of Nike's famous trademarks and associated goodwill." This case is poised to address many unanswered questions about creative freedom, fair use, ownership, and the public domain.

Rapper Lil Yachty has also entered into NFT litigation. In January 2022, Lil Yachty, whose real name is Miles Parks McCollum, filed a lawsuit in a California federal court claiming that an NFT seller, Opulous, committed trademark infringement for its use of his name and likeness to raise over \$6.5 million in venture capital funds. Lil Yachty's complaint alleges that Opulous launched an advertising initiative for a "Lil Yachty NFT Collection" that would grant buyers access to new music from Lil Yachty, featuring images of him. Lil Yachty and Opulous had previously discussed the rapper's potential involvement in the launch of Opulous for selling music copyright-backed NFTs. Despite the two parties never entering into an agreement with one another, Opulous published a series of press releases and social media posts which prominently feature images of Lil Yachty. As stated in Lil Yachty's complaint, "Defendants utilized the name, trademark, and photography of Plaintiff, all without Plaintiff's consent. Defendants then collectively and maliciously utilized the alleged affiliation and involvement of Plaintiff as their flagship artist partnership to successfully raise substantial capital funds (represented as over \$6.5 million), yet never remitted any monies to Plaintiff." Lil Yachty seeks damages, injunctive relief to stop Opulous from continuing their use of his name and image, and disgorgement of Opulous's profits.

As is evident, there is a considerable amount of NFT litigation brewing. There is great potential for legal precedent to be set in relation to NFTs, creative freedom, ownership, and intellectual property. If you have questions about how to license your NFTs or protect your brand, please contact [Connie Lindman](#) or [Courtney Rogers Perrin](#). You can also learn more about how our attorneys assist developers, minters and crypto-mining operations spanning the blockchain ecosystem by visiting our [Blockchain team page](#).

Christine Hale contributed to this article during her time as an associate at Frost Brown Todd. Sadly, Christine passed away in April 2022, cutting short what would have been a very successful career as an attorney. Christine was a valued member of our business litigation practice and a graduate of Vanderbilt University School of Law, where she was the political science chair of the Black Law Students Association.

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