



Hot Topics in Trademark and Copyright Law

Half Day Program

July 13, 2022

NFTs & IP: IT'S COMPLICATED

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Just when trademark owners think that they have come to terms with the various ways that the Internet can wreak havoc with brand protection efforts and budgets, new and different brand headaches hit the scene. While virtual worlds like Second Life have been around for years, Facebook, Inc.'s 2021 renaming to Meta Platforms, Inc. illustrates a heightened and broader public interest in new interactive virtual reality and other enhanced online experiences and technologies that are expected to be part of Web 3.0, the promised future decentralized Internet. Along with a rush of trademark owners filing applications covering the use of their brands in the metaverse¹ comes "domain names" that are not regulated by ICANN, such as .ETH, and a flood of non-fungible tokens (NFTs) offered in marketplaces like Opensea.io:

- *Blockchain Domains*: Just as domain names in the Domain Name System (DNS) were developed as shorthand to easily remember otherwise lengthy numerical internet addresses,

¹ See *Branding in the Metaverse: The Future of Virtual Goods Trademarks*, THEFASHIONLAW.COM, <https://www.thefashionlaw.com/branding-in-the-metaverse-the-rising-quest-for-virtual-goods-trademarks/> (Dec. 9, 2021).

blockchain domains are now offered for users to organize lengthy cryptocurrency wallet addresses into a single unique name. As an example, Ethereum Name Service developed “domain names” to provide a blockchain protocol for a domain that could be purchased using \$ETH cryptocurrency. There appears to be rampant speculation for [brand].ETH names. The name service is not regulated by ICANN or subject to the domain name infringement protocols like the UDRP or the Trademark Clearinghouse available in the DNS. Also, special browser extensions are required to view the content at the .ETH “domain name,” which makes it difficult for a brand owner not already active in the Web 3.0 world to assess whether the content is problematic or unlikely to pose any marketplace or brand protection issues.²

- *NFTs*: The blockchain and cryptocurrency world also produced a robust market for creating, buying, and selling non-fungible tokens, or NFTs. What is an NFT? It is a token representing ownership of a digital asset, sometimes a video or an image, created using blockchain technology, that “contains built-in authentication, which serves as proof of ownership.”³ You can’t hold it, and it exists only in cyberspace, but NFTs are used to auction and sell assets in marketplaces like Opensea.io for lots of money or cryptocurrency. How does this affect brand owners? Even a cursory review of Opensea.io shows numerous NFTs referring to well-known brands. Some brands are behind these NFTs, but many (most?) are not, and a few brand owners are striking back with takedown notices and lawsuits.

Examples of recent litigation involving NFTs include:

1. The luxury goods company Hermès sued the creator of a “MetaBirkin” online store offering “MetaBirkin” NTFs that are digital images of the coveted Hermès BIRKIN handbag, offered in various fuzzy and colorful coverings. The suit is pending in the Southern District of New York, where defendant is asserting a First Amendment

² See <https://www.icann.org/en/blogs/details/buyer-beware-not-all-names-are-created-equal-24-11-2021-en>. See also Kevin T. Dugan, *There’s a New Crypto Land Grab Going On*, N.Y. MAGAZINE (Nov. 23, 2021).

³ Robyn Conti & Josh Schmidt, *What Is an NFT? Non-Fungible Tokens Explained*, FORBES (Feb. 15, 2022).

defense, claiming that his creations are art.⁴ The issue of whether the MetaBirkin NFTs constitute artistic, expressive works entitled to First Amendment protection or infringements is hotly contested. The District Court initially denied the defendant's motion to dismiss but the issue of how to assess the merits of the Lanham Act claim against the MetaBirkin NFTs may be teed up for the Court of Appeals on an interlocutory basis. Defendant's motion to certify the denial of the dismissal motion is currently pending before the District Court as of the date of this paper. A copy of the District Court's May 18, 2022 decision denying the motion to dismiss is included as **Exhibit A**.

2. Director Quentin Tarantino and film company Miramax are fighting over whether the terms of the parties' 1993 agreements relating to rights in Tarantino's script for the movie Pulp Fiction permit Tarantino to sell script-related Pulp Fiction NFTs.⁵ A copy of the Miramax November 16, 2021 complaint is included as **Exhibit B**.
3. Rapper Lil Yachty sued two music companies for using his name and likeness without permission to promote music-copyright backed NFTs.⁶ A copy of the Lil Yachty January 27, 2022 complaint is included as **Exhibit C**.
4. Nike sued the shoe re-seller Stockx, charging Stockx with infringement relating to Stockx's offering of NFTs ostensibly to authenticate the sale and transfer of actual shoes.⁷ Nike's May 25, 2022 amended complaint is included as **Exhibit D**.
5. Even the mega NFT brands, whose business is the creation and sale of NFTs, are suffering from infringements in the NFT marketplaces. Yuga Labs, the owner of the highly successful Bored Ape NFT franchise, sued another seller of knock-off BAYC NFTs for infringement.⁸ A copy of the Yuga Labs June 24, 2022 complaint is included as **Exhibit E**.

⁴ Hermès Int'l v. Rothschild, Civ. Action No. 1:22-cv-00384-AJN-GWG (SDNY) (filed Jan. 14, 2022) (motion to dismiss by defendant denied).

⁵ Miramax, LLC v. Quentin Tarantino, Civ. Action No. 2:21-cv-08979-FMO-JC (CD Cal.) (filed Nov. 16, 2021).

⁶ Miles Parks McCollum v. Opulous et al., Civ. Action No. 2:22-cv-00587 (C.D. Cal.) (filed Jan. 27, 2022).

⁷ Nike, Inc. v. Stockx LLC, Civ. Action No. 1:22-cv-00983-VEC (S.D.N.Y.) (filed Feb. 3, 2022).

⁸ Yuga Labs, Inc. v. Ripps, Civ. Action No. 2:22-cv-04355-JFW-JEM (CD Cal.) (filed June 24, 2022).

In addition to the pleadings and decisions in the noted cases, resources and recommended reading include:

- The Fashion Law blog, at thefashionlaw.com, with numerous articles regarding NFTs including:
 - What Do Brands Stand to Gain in Fights Over Trademarks in the Metaverse? (Jan. 22, 2022)
 - NFT, Metaverse-Focused Trademark Applications Continue to Climb in U.S. (June 14, 2022)
 - With Enduring Uncertainty at Play, Lessons for Brands Looking to NFTs (June 10, 2022)
- Terms of use for the platforms offering NFTs for sale, such as OpeanSea: <https://opensea.io/tos>
- One of many blogs addressing blockchain and NFTs, such as NFTPlazas.com or TheBlock.com

EXHIBIT

A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
HERMÈS INTERNATIONAL and HERMÈS OF	:	
PARIS, INC.,	:	
	:	
Plaintiffs,	:	22-cv-384 (JSR)
	:	
-v-	:	<u>MEMORANDUM ORDER</u>
	:	
MASON ROTHSCHILD,	:	
	:	
Defendant.	:	
-----	x	

JED S. RAKOFF, U.S.D.J.

Around December 2021, defendant Mason Rothschild created digital images of faux-fur-covered versions of the luxury Birkin handbags of plaintiffs Hermès International and Hermès of Paris, Inc. (collectively, "Hermès"). Rothschild titled these images "MetaBirkins" and sold them using so-called "NFTs" (non-fungible tokens), explained further below. In response, Hermès filed a complaint, subsequently amended, claiming trademark infringement, trademark dilution, and cybersquatting.

Now before the Court is Rothschild's motion to dismiss the amended complaint for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). ECF No. 26. The motion is fully briefed and the Court heard oral argument on May 4, 2022. As the Court stated by "bottom-line" order dated May 5, 2022, see ECF No. 49, the Court denies the motion to dismiss. This

Memorandum Order confirms that ruling and sets forth the reasons for it.

BACKGROUND

Unless otherwise indicated, the following factual allegations are taken from the amended complaint. See ECF No. 24.

Hermès is a luxury fashion business known for, among other products, its unique Birkin handbag, which sells for anywhere from thousands of dollars to over one hundred thousand dollars. Am. Compl. ¶¶ 27, 29, 33, 37. Hermès owns trademark rights in the Hermès and Birkin marks as well as trade dress rights in the Birkin handbag design. Id. ¶¶ 34-36.

NFTs, or "non-fungible tokens," are units of data stored on a blockchain that are created to transfer ownership of either physical things or digital media. Id. ¶ 4. When NFTs are created, or "minted," they are listed on an NFT marketplace where NFTs can be sold, traded, etc., in accordance with "smart contracts" that govern the transfers. Id. ¶¶ 61, 63. Because NFTs can be easily sold and resold with a transaction history securely stored on the blockchain, NFTs can function as investments that can store value and increase value over time. Id. ¶ 69.

When an NFT is linked to digital media, the NFT and corresponding smart contract are stored on the blockchain and are linked to digital media files (e.g., JPEG images, .mp4 video files,

or .mp3 music files) to create a uniquely identifiable digital media file.¹ Id. ¶ 60. The NFTs and smart contracts are stored on the blockchain (so that they can be traced), but the digital media files to which the NFTs point are stored separately, usually on either a single central server or a decentralized network. Id. ¶ 62.

Fashion brands are beginning to create and offer digital replicas of their real-life products to put in digital fashion shows or otherwise use in the metaverse. Am. Compl. ¶ 66. NFTs can link to any kind of digital media, including virtual fashion items that can be worn in virtual worlds online. Id. Brands sometimes partner with collaborators in offering co-branded virtual fashion products. Id. ¶ 67.

Defendant Mason Rothschild is a "marketing strategist" and "Entrepreneur" who "come[s] from the fashion industry." Id. ¶¶ 1,

¹ This means that an NFT could link to a digital media file that is just an image of a handbag or could link to a different kind of digital media file that is a virtual handbag that can be worn in a virtual world. Fashion companies are just starting to branch out into offering virtual fashion items that can be worn in virtual worlds online (most commonly, for now, in the context of videogames, but with potential to expand into other virtual worlds and platforms as those develop), and NFTs can be used to create and sell such virtual fashion items.

However, while Hermès calls what Rothschild sells "digital handbags," they do not dispute that what Rothschild sells are digital images of (faux fur, not leather) Birkin bags, and not virtually wearable Birkin bags.

8-9, 25 (quoting Rothschild's statements in an interview at Ex. Y). In or around May 2021, Rothschild created a digital image entitled "Baby Birkin," which depicted a 40-week-old fetus gestating inside of a transparent Birkin handbag. Id. ¶¶ 70-71. Rothschild sold the NFT linked to the "Baby Birkin" digital image for \$23,500; it later resold for \$47,000. Id. ¶ 72.

In or around December 2021, Rothschild created a collection of digital images titled "MetaBirkins," each of which depicted an image of a blurry faux-fur-covered Birkin handbag. Id. ¶¶ 37, 76, 79, Fig. 5 and Ex. Z. Rothschild used NFTs to sell these "MetaBirkins" digital images. Id. ¶¶ 79-80. Each NFT in the "MetaBirkins" collection is titled with a number from 0 to 99 and not the "MetaBirkins" name. Id. ¶ 10. The NFTs have sold for prices comparable to real-world Birkin handbags. Id. ¶¶ 8, 112, 120-21.

When Rothschild initially sold the NFTs of the "MetaBirkins" digital images, Rothschild described them as "a tribute to Herm[ès]' most famous handbag, the Birkin, one of the most exclusive, well-made luxury accessories. Its mysterious waitlist, intimidating price tags, and extreme scarcity have made it a highly covetable 'holy grail' handbag that doubles as an investment or store of value." Id. ¶ 94. In an interview with Yahoo Finance about the "MetaBirkins" collection, Rothschild stated that "for me, there's nothing more iconic than the Herm[ès] Birkin bag. And I

wanted to see as an experiment if I could create that same kind of illusion that it has in real life as a digital commodity." Am. Compl. Ex. Y. He went on to state that "there's not much difference" between owning a MetaBirkin and "having the crazy car or the crazy handbag in real life because it's kind of just that, that showing of like wealth or that kind of explanation of success"; that "now you're able to bring that into the metaverse with these iconic NFTs"; and that "I feel like the difference between the two is like getting a little bit blurred now because we have this new outlet, which is the metaverse, to showcase, showcase them in our virtual worlds, and even just show them online." Id.

Rothschild has sold his "MetaBirkins" NFTs on four different NFT platforms. Am. Compl. ¶¶ 102-03, 122-33. He has created social media and marketing channels: @METABIRKINS on Twitter and Instagram, MetaBirkins.com, and a "MetaBirkins" community on the Discord social platform. Id. ¶¶ 90-98, 100-01, 122-33. Rothschild's advertising for the "MetaBirkins" NFTs has included slogans such as "NOT YOUR MOTHER'S Birkin" and the hashtags "#MetaBirkins GONNA MAKE IT" and "#MINT A METABIRKIN HOLD A METABIRKIN." Id. ¶¶ 88, 95-96. Rothschild has complained that he has seen his "MetaBirkin" NFTs being "counterfeited," and that he

saw "more and more fake MetaBirkins sold every hour." Id. ¶¶ 12, 108.

Consumers posting on the "MetaBirkins" Instagram page have expressed actual confusion, believing that there is an Hermès affiliation with Rothschild's "MetaBirkins" collection. Id. ¶¶ 114-15. Similar confusion exists in the media. For example, the magazines *Elle* and *L'Officiel* and the *New York Post* have all mistakenly reported that the "MetaBirkins" NFTs were unveiled by Hermès in partnership with Rothschild. Id. ¶¶ 117-19.²

LEGAL STANDARD

To survive a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, the complaint must include "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A complaint must offer more than "a formulaic recitation of the elements of a

² While the foregoing allegations are taken from the amended complaint, Hermès also avers that, after Hermès filed its amended complaint, Rothschild announced a new collection of NFTs titled "I Like You You're Weird," which includes NFTs linked to forms of digital media that a user could virtually wear in the Arcade video game world. ECF No. 32 (Decl. of Gerald Ferguson) Ex. A. As noted below, however, the Court considers only the well-pleaded facts alleged in the amended complaint for purposes of this motion to dismiss under 12(b)(6).

cause of action," or "naked assertion[s]" devoid of "further factual enhancement" in order to survive dismissal. See Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 557 (2007). If the plaintiff has "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Twombly, 550 U.S. at 570.

DISCUSSION

The Court first addresses Rothschild's arguments that Hermès's trademark infringement claims fail as a matter of law based on Rogers v. Grimaldi, 875 F.2d 994 (2d Cir. 1989). The Court then turns to Rothschild's arguments as to Hermès's remaining claims. Because the Court concludes that the amended complaint contains sufficient factual allegations to make out the trademark infringement and other claims, the Court denies Rothschild's motion to dismiss.

I. Trademark Infringement (Lanham Act and New York law)

The analysis for claims under Sections 32 and 42(a) of the Lanham Act parallels that for the trademark infringement and unfair competition claims under New York law, see ESPN, Inc. v. Quiksilver, Inc., 586 F. Supp.2d 219, 230 (S.D.N.Y. 2008), though a party stating a claim for unfair competition under New York law must also plead that the alleged infringer acted in bad faith, see

Empresa Cubana del Tabaco v. Culbro Corp., 399 F.3d 462, 485 (2d Cir. 2005).

The parties dispute, however, what test applies, at least in part, to analyzing the alleged trademark infringement at issue here. Rothschild argues that, because the digital images of the Birkin bags that are tied to the NFTs he sells are "art," the Second Circuit's test in Rogers v. Grimaldi applies, and that applying the Rogers test requires dismissing Hermès's claims on First Amendment grounds. 875 F.2d 994 (2d Cir. 1989). Hermès argues that the two-prong test of Gruner + Jahr applies instead, asking whether the mark is entitled to protection and requiring application of the Polaroid factors to assess the likelihood of confusion. Gruner + Jahr USA Pub. v. Meredith Corp., 991 F.2d 1072, 1074 (2d Cir. 1993). Hermès further argues that, even if the Rogers test does apply, the Court cannot make factual determinations of artistic relevance or explicit misleadingness at the motion to dismiss stage.

The Court concludes that the Rogers test applies, at least in part, to the trademark infringement analysis of Rothschild's uses of "MetaBirkins." Because, however, the amended complaint includes sufficient allegations of explicit misleadingness either as a function of likelihood of confusion under the Polaroid factors, see Twin Peaks Prods., Inc. v. Publ'ns Int'l Ltd. 996 F.2d 1366,

1379–80 (2d Cir. 1993) (remanding to district court for application of Polaroid factors to determine explicit misleadingness), or under Rothschild’s own theory of the explicitly misleading analysis, the Court denies the motion to dismiss the trademark infringement claims.

A. “MetaBirkins” as Source Indicator or Artistic Expression?

Hermès argues that Rothschild uses the “MetaBirkins” mark, in commerce, to brand a product line, and to attract public attention and signify source. See 15 U.S.C. § 1127 (noting that use in commerce includes when the mark “is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale”); see also Tiffany & Co. v. Costco Wholesale Corp., 971 F.3d 74, 92 (2d Cir. 2020) (“Whether a defendant has [used a term as a mark] may entail an investigation into, *inter alia*, whether the challenged material appeared on the product itself, on its packaging, or in any other advertising or promotional materials related to [the] product, and the degree to which defendants were trying to create, through repetition . . . a[n] association between [themselves] and the [mark].” (internal citations and quotation marks omitted)).

Rothschild argues that because he used "MetaBirkins" as the title of artwork -- the digital images of the fur-covered Birkin bags -- and not as a source identifier of his products, his use of Hermès's mark is therefore entitled to First Amendment protection under Rogers v. Grimaldi, 875 F.2d 994 (2d Cir. 1989), and that the test set out in Rogers applies to the trademark infringement analysis here. See id. at 999 ("We believe that in general the [Lanham] Act should be construed to apply to artistic works only where the public interest in avoiding consumer confusion outweighs the public interest in free expression. In the context of allegedly misleading titles . . . that balance will normally not support application of the Act unless the title has no artistic relevance to the underlying work whatsoever, or, if it has some artistic relevance, unless the title explicitly misleads as to the source or the content of the work.").

While the Second Circuit in Rogers was considering the title of a movie that used plaintiff Ginger Rogers's name, the Second Circuit has not only applied the Rogers test to titles, but also has found that it "is generally applicable to Lanham Act claims against works of artistic expression." Cliffs Notes v. Bantam Doubleday Dell Pub. Group, 886 F.2d 490, 495 (2d Cir. 1989). Even the amended complaint's allegations acknowledge the artistic aspect of some of the digital images sold through the NFTs. See,

e.g., Am. Compl. ¶ 9 (stating that “a digital image connected to an NFT may reflect some artistic creativity”). In any event, even if the commercial aspects of a work are intertwined with artistic content, the trademark-using speech must be treated as noncommercial. See, e.g., Riley v. Nat’l Fed’n of the Blind of N.C., Inc., 487 U.S. 781, 796 (1988).

The Second Circuit held in Rogers that while titles can be source indicators, this function is “inextricably intertwined” with their communicative, artistic functions. 875 F.2d at 998. Because trademark claims therefore implicate First Amendment interests, accounting for these different interests requires a separate test, as the Court laid out in Rogers, and it is that test that applies here. See id. Because Rothschild is selling digital images of handbags that could constitute a form of artistic expression, balancing the First Amendment concerns with Lanham Act protection requires applying the Rogers test.

Hermès tries to distinguish Rogers on the ground that Rothschild uses the “MetaBirkins” mark as a source identifier on social media to promote and advertise the NFTs, as a URL, and to identify a website, arguing that the First Amendment does not protect unauthorized use of another’s mark as a source identifier. But this does little to distinguish Rogers or explain why the Rogers test does not apply here. Using the title of the artwork

for social media and online accounts dedicated to selling the artwork is just like the marketing and advertising approved in Rogers. 875 F.2d at 998. And Rogers is not inapplicable simply because Rothschild sells the images -- the movie studio defendant in Rogers sold the film at issue. 875 F.2d at 997. Neither does Rothschild's use of NFTs to authenticate the images change the application of Rogers: because NFTs are simply code pointing to where a digital image is located and authenticating the image, using NFTs to authenticate an image and allow for traceable subsequent resale and transfer does not make the image a commodity without First Amendment protection any more than selling numbered copies of physical paintings would make the paintings commodities for purposes of Rogers.³

³ Rogers might not apply, Rothschild seems to concede, if the NFTs were attached to a digital file of a virtually wearable Birkin handbag, in which case the "MetaBirkins" mark would refer to a non-speech commercial product (albeit not one that is, as yet, considered ordinary or quotidian). But Hermès's only contention on this score is that Rothschild might branch out into virtually wearable "MetaBirkins" because he has sold NFTs of wearable items under another of his project headings, "I Like You You're Weird." Not only is the fact that Rothschild has a separate project under a different name that allows the NFT owners to interact in the metaverse not sufficient to state a claim with regard to the "MetaBirkins," more critically, these contentions are not found in the amended complaint. See ECF No. 32 Ex. A. The Court will thus not consider them for purposes of this motion to dismiss. The amended complaint does not contain sufficient factual allegations that Rothschild uses, or will in the immediate foreseeable future use, the mark to sell non-speech commercial products, i.e., virtually wearable Birkin bags.

B. Does Rogers Protect Rothschild's Uses of "MetaBirkins"?

Assuming, therefore that Rogers here applies, does it entail dismissal of the amended complaint? Rothschild argues that his marketing and sale of the "MetaBirkins" NFTs is not copyright infringement under Rogers as a matter of law because he is using the "MetaBirkins" trademark in noncommercial speech, that use of the trademark has some artistic relevance, and the use of the trademark does not explicitly mislead as to the source or content of the work. Rogers, 875 F.2d at 998. But, to the contrary, the amended complaint contains sufficient factual allegations that the use of the trademark is not artistically relevant and that the use of the trademark is explicitly misleading as to the source or content of the work. This Court may not resolve these factual disputes at the motion to dismiss stage.

1. Artistic Relevance

The threshold for "artistic relevance" is intended to be low and will be satisfied unless the use "has no artistic relevance to the underlying work whatsoever." Rogers, 875 F.2d at 999. "The artistic relevance prong ensures that the defendant intended an artistic-i.e., noncommercial-association with the plaintiff's mark, as opposed to one in which the defendant intends to associate with the mark to exploit the mark's popularity and good will." Louis Vuitton Malletier S.A. v. Warner Bros. Ent. Inc.,

868 F. Supp. 2d 172, 178 (S.D.N.Y. 2012); see also Rogers, 875 F.2d at 1001 (finding that the defendant satisfied the artistic relevance prong where its use of the trademark was “not arbitrarily chosen just to exploit the publicity value of [the plaintiffs’ mark] but instead ha[d] genuine relevance to the film’s story”).

Here, however, the amended complaint includes sufficient allegations that Rothschild entirely intended to associate the “MetaBirkins” mark with the popularity and goodwill of Hermès’s Birkin mark, rather than intending an artistic association, see, e.g., Am. Compl. ¶ 94 (quoting Rothschild’s statements that his “MetaBirkins” were intended as “a tribute to Herm[è]s’ most famous handbag, the Birkin,”); Am. Compl. Ex. Y (quoting Rothschild’s statements in an interview about the “MetaBirkins” collection, that he “wanted to see as an experiment if [he] could create that same kind of illusion that [the Birkin bag] has in real life as a digital commodity.”). Viewing the plausible allegations in the amended complaint, including Rothschild’s own descriptions of the “MetaBirkins” project, the Court declines to resolve at this stage whether the “MetaBirkins” clear the admittedly low bar of artistic relevance.

2. Explicit Misleadingness

Even if the “MetaBirkins” satisfied the artistic relevance prong, the amended complaint contains sufficient factual

allegations that Rothschild's use of the "MetaBirkins" mark is explicitly misleading and thus still actionable under the Lanham Act. While Rogers did not consider the Polaroid factors in dismissing the Lanham Act claims at issue in that case, in a subsequent opinion, written by the same judge (Judge Newman), the Second Circuit, while still applying the Rogers test, expressly remanded to the district court to consider the Polaroid factors in determining explicit misleadingness. See Twin Peaks, 996 F.2d at 1379 (holding that the relevant question is whether the defendant's use of the mark "is misleading in the sense that it induces members of the public to believe [the allegedly infringing use] was prepared or otherwise authorized" by the plaintiff); Louis Vuitton Malletier, 868 F. Supp.2d at 179-80.

Thus, while the Second Circuit in Rogers concluded that the Lanham Act "should be construed to apply to artistic works only where the public interest in avoiding consumer confusion outweighs the public interest in free expression," 875 F.2d at 999, it then added in Twin Peaks that in considering explicit misleadingness under the Rogers balancing test, the Court should consider the Polaroid factors to determine whether the likelihood of confusion is sufficiently compelling to outweigh the public interest in free expression. 996 F.2d at 1379. Twin Peaks emphasizes that the relevant question is whether the defendant's use of the mark "is

misleading in the sense that it induces members of the public to believe [the allegedly infringing use] was prepared or otherwise authorized" by the plaintiff, 996 F.2d at 1379, and that this determination "must be made, in the first instance, by application of the venerable *Polaroid* factors." *Id.* (citing *Cliffs Notes*, 886 F.2d at 495 n. 3).

Applying the Polaroid factors is fact-intensive, and resolving the likelihood of confusion on a motion to dismiss posture is not appropriate. See, e.g., Deere & Co. v. MTD Prods., Inc., No. 00-CV-5936 (LMM), 2001 WL 435613, at *1 (S.D.N.Y. Apr. 30, 2001). The amended complaint contains sufficient factual allegations to support a conclusion of explicit misleadingness under the Polaroid factors -- particularly as to the strength of the Birkin mark, evidence of actual confusion,⁴ and the junior user's bad faith in adopting the mark.⁵ See Polaroid Corp., 287

⁴ As noted above, the amended complaint contains evidence on of actual confusion on the part of both consumers and the media about Hermès's affiliation with Rothschild's MetaBirkins collection, believing there is such an affiliation and mistakenly reporting it as such. Am. Compl. ¶¶ 114-15, 117-19.

⁵ As noted above, Rothschild described his MetaBirkins images as "a tribute to Herm[ès]' most famous handbag, the Birkin." *Id.* ¶ 94. Rothschild stated in an interview that he "wanted to see as an experiment if [he] could create that same kind of illusion that [the Birkin bag] has in real life as a digital commodity." Am. Compl. Ex. Y. He further observed in that interview that the difference between a real-life luxury bag and the NFT versions "is

F.2d at 495 (noting factors include (1) the strength of the plaintiff's mark; (2) the similarity of the marks; (3) the competitive proximity of the products in the marketplace; (4) the likelihood that the senior user will "bridge the gap" by moving into the junior user's product market; (5) evidence of actual confusion; (6) the junior user's bad faith in adopting the mark; (7) the respective quality of the products; and (8) the sophistication of the consumers in the relevant market). The amended complaint's allegations may not be overwhelming evidence of explicit misleadingness, but they are sufficient to survive a motion to dismiss.

Moreover, even under Rothschild's theory of the explicitly misleading analysis, the amended complaint survives the motion to dismiss. Rothschild argues that (1) that explicit misleadingness cannot be established by use of the mark alone; (2) that evidence of confusion alone is not sufficient to prove explicit misleadingness; and (3) that evidence of confusion must relate to the nature of the behavior of the identifying material's user, not the impact of the use.

like getting a little bit blurred now because we have this new outlet, which is the metaverse, to showcase, showcase them in our virtual worlds, and even just show them online." Id.

As to the first two arguments, the amended complaint alleges more than simply use or actual confusion. And as to the third, even assuming *arguendo* this were correct, the amended complaint contains sufficient factual allegations as to Rothschild's behavior -- not just the impact of the use on consumers, the media, and the public, but also that Rothschild himself made statements that are plausibly interpreted as explicitly misstatements and that this engendered the confusion on the part of consumers. See, e.g., Am. Compl. ¶ 94; Am. Compl. Ex. Y.⁶

Because the amended complaint includes sufficient allegations of explicit misleadingness either as a function of likelihood of confusion under the Polaroid factors or under Rothschild's own theory of the explicitly misleading analysis, the Court denies the motion to dismiss the trademark infringement claims.⁷

⁶ Rothschild further argues that Rogers shows as a matter of law that the "MetaBirkins" title here is not misleading. Rogers includes examples of titles that are explicitly misleading: "Nimmer on Copyright" when the treatise was not authored by Nimmer, or "Jane Fonda's Workout Book" when the book was unrelated to Jane Fonda. 875 F.2d at 999. But those examples are relevant to the alleged infringement there, as to Ginger Rogers's name, and are by no means inconsistent with finding that the title "MetaBirkins," when the digital images tied to the NFTs have nothing to do with Hermès, is explicitly misleading.

⁷ Rothschild argues in the alternative that Dastar Corp. v. Twentieth Century Fox Film Corp. bars Hermès's claims because the allegedly infringing use concerns digital images and not "tangible" goods. 539 U.S. 23 (2003). Rothschild argues that Dastar

II. The Amended Complaint's Other Claims

Rothschild argues that Hermès's remaining claims for, *inter alia*, trademark dilution and cybersquatting, rise and fall with the First Amendment defense to the trademark infringement claims and the application of the Rogers test: that if Rogers protects Rothschild's "MetaBirkins" uses against trademark infringement claims, it even more clearly protects against trademark dilution and cybersquatting claims. See ECF No. 27 at 22-25. Rothschild does not otherwise contend that the amended complaint lacks sufficient factual allegations to plausibly allege trademark dilution or cybersquatting. Because, as discussed in above, the Court concludes that the Rogers test does not support dismissing the trademark infringement claims at the pleadings stage, the Court

stands for the proposition that confusion about origin or sponsorship of (intangible) creative content is not actionable under the Lanham Act, which only covers confusion about origin or sponsorship of physical goods. Dastar, 539 U.S. 23 (2003). Under this argument, because the digital images associated with the "MetaBirkins" NFTs are "intangible creative content," and not physical goods, the Lanham Act does not cover confusion about their origin or sponsorship. This, however, is an unduly narrow reading of Dastar, which held that Section 43(a) of the Lanham Act does not prevent the unaccredited copying of an uncopyrighted work. Id. at 37. The Supreme Court rejected an argument that the Lanham Act provided trademark protection akin to copyright rights by distinguishing between creative ideas and "tangible goods that are offered for sale." Id. The Court thus rejects Rothschild's argument that Hermès's trademark infringement claims are barred under Dastar.

also denies the motion to dismiss the trademark dilution and cybersquatting claims.

CONCLUSION

For the aforementioned reasons, and as the Court stated by bottom-line order dated May 5, 2022, see ECF No. 49, the Court denies Rothschild's motion to dismiss the amended complaint. The Clerk of Court is directed close the entry at docket number 26.

SO ORDERED.

Dated: New York, NY
May 18, 2022



JED S. RAKOFF, U.S.D.J.

EXHIBIT

B

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13 Attorneys for Plaintiff,
 14 MIRAMAX, LLC

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 MIRAMAX, LLC,

18 Plaintiff,

19 vs.

20 QUENTIN TARANTINO; VISIONA
 21 ROMANTICA, INC.; and DOES 1–50,

22 Defendants.

Case No. _____

COMPLAINT FOR

- 1. **BREACH OF CONTRACT**
 - 2. **COPYRIGHT INFRINGEMENT**
 - 3. **TRADEMARK INFRINGEMENT**
 - 4. **UNFAIR COMPETITION**
- DEMAND FOR JURY TRIAL**

1 1. Eager to cash in on the non-fungible token (“NFT”) boom, as widely
2 reported in the media, Quentin Tarantino recently announced plans to auction off
3 seven “exclusive scenes” from the 1994 motion picture *Pulp Fiction* in the form of
4 NFTs. According to the official website for the sale, <https://tarantinonfts.com/>,
5 “[t]he collection holds secrets from Pulp Fiction,” and “[e]ach NFT contains one or
6 more previously unknown secrets of a specific iconic scene from Pulp Fiction.” The
7 “privileged” purchasers “will get a hold of those secrets.”

8 2. Tarantino kept his Pulp Fiction NFT plans secret from Miramax, his
9 long-time financier and collaborator on multiple critically and commercially
10 successful films, including *Pulp Fiction*, *Jackie Brown*, and *Kill Bill: Volumes 1*
11 *and 2*. He made no efforts to contact Miramax prior to his coordinated press
12 campaign, despite having what were likely extensive negotiations with third parties
13 to develop and sell the NFTs.

14 3. The fact that Tarantino kept Miramax out of the loop is particularly
15 problematic because he granted and assigned nearly all of his rights to *Pulp Fiction*
16 (and all its elements in all stages of development and production) to Miramax in
17 1993, including the rights necessary for the “secrets from Pulp Fiction” that he
18 intends to sell. Tarantino’s limited “Reserved Rights” under the operative
19 agreements are far too narrow for him to unilaterally produce, market, and sell the
20 Pulp Fiction NFTs.

21 4. Upon learning of Tarantino’s plan, Miramax sent him a cease and desist
22 letter setting forth, in great detail, Tarantino’s disregard of Miramax’s broad rights
23 to *Pulp Fiction*. Wrongly claiming that his narrow Reserved Rights are sufficient,
24 Tarantino remains undeterred and has refused to comply with Miramax’s demands
25 to cancel the sale of Pulp Fiction NFTs.

26 5. Days after being told to cease and desist, Tarantino’s initial plans to sell
27 NFTs relating to Miramax’s intellectual property intensified and expanded.
28 According to a promotional Twitter account for the sale, @TarantinoNFTs, the Pulp

1 Fiction NFTs, which will include scans of some pages of the *Pulp Fiction* script,
2 will be sold in December 2021, and Tarantino will also sell “the Artifacts Collection
3 of up to ten iconic props from Tarantino’s films,” including “one from Pulp
4 Fiction.” The account is using an animated scene from another Miramax film, *Kill
5 Bill: Vol. 2*, as well as unauthorized images and graphics from or relating to *Pulp
6 Fiction*, to promote the sale.

7 6. Tarantino’s conduct has forced Miramax to bring this lawsuit against a
8 valued collaborator in order to enforce, preserve, and protect its contractual and
9 intellectual property rights relating to one of Miramax’s most iconic and valuable
10 film properties. Left unchecked, Tarantino’s conduct could mislead others into
11 believing Miramax is involved in his venture. And it could also mislead others into
12 believing they have the rights to pursue similar deals or offerings, when in fact
13 Miramax holds the rights needed to develop, market, and sell NFTs relating to its
14 deep film library.

15 **THE PARTIES**

16 7. Plaintiff Miramax, LLC is a Delaware limited liability company with
17 its principal place of business in Los Angeles, California.

18 8. Defendant Quentin Tarantino, upon information and belief, is a United
19 States citizen who currently resides in Israel. On information and belief, Tarantino
20 owns a home and multiple businesses within Los Angeles, California, including the
21 New Beverly Cinema and the Vista Theatre.

22 9. Defendant Visiona Romantica, Inc. is a California corporation with its
23 principal place of business in Los Angeles, California. On information and belief,
24 during all relevant times, Tarantino acted as an authorized agent of Visiona
25 Romantica, Inc., which is his loan-out corporation and of which he is the founder
26 and CEO.

27 10. The true names and capacities, whether individual, corporate, associate,
28 or otherwise, of DOES 1 through 50, inclusive, are unknown to Miramax, who

1 therefore sues said Defendants by such fictitious names and will ask leave to amend
2 the Complaint to show their true names and capacities when they have been
3 ascertained. Miramax is informed and believes and thereon alleges that each of the
4 Defendants designated herein as DOE is responsible in some manner for the events
5 and happenings referred to in this Complaint.

6 **JURISDICTION AND VENUE**

7 11. This Court has subject matter jurisdiction over Miramax's federal
8 copyright infringement, trademark infringement, and unfair competition claims
9 pursuant to 28 U.S.C. §§ 1331, 1338(a), 17 U.S.C. § 501(b), and 15 U.S.C. §1121,
10 and supplemental jurisdiction over Miramax's breach of contract claim relating to
11 and arising from the same set of facts as Miramax's federal claims pursuant to 28
12 U.S.C. § 1367.

13 12. This Court has personal jurisdiction over Quentin Tarantino given both
14 Tarantino's continuous and systematic affiliations with the forum state, including
15 his ownership interests in a home and multiple businesses, and his specific conduct
16 at issue in this lawsuit. Tarantino also consented to personal jurisdiction of this
17 Court pursuant to the June 23, 1993 Original Rights Agreement. *See* ¶¶ 19-22; Ex.
18 A (Original Rights Agreement), ¶ 29.

19 13. This Court has personal jurisdiction over Visiona Romantica, Inc.
20 because it is incorporated in California and has an office located at 11812 San
21 Vicente Boulevard, 4th Floor, Los Angeles, California, 90049.

22 14. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) because Defendants
23 are both subject to personal jurisdiction within this district, and because a substantial
24 part of the events giving rise to Miramax's claims occurred here.

25 **TARANTINO'S GRANT OF RIGHTS TO MIRAMAX**

26 15. Miramax is a global film and television studio best known for its award-
27 winning and original content.
28

1 16. Miramax’s unrivaled library of more than 700 titles has received 278
2 Academy Award® nominations and 68 Oscars®, including four Best Picture
3 awards. Miramax’s *Pulp Fiction* (1994) is one of the most influential films in
4 history.

5 17. *Pulp Fiction* won the prestigious Palme d’Or at the 1994 Cannes Film
6 Festival. The film went on to gross over \$213,000,000 at the worldwide box office
7 (which would be hundreds of millions of dollars more, if adjusted for inflation), and
8 garnered widespread critical acclaim in the process. *Pulp Fiction* was Miramax’s
9 first major release following the independent studio’s acquisition by Disney, and
10 Miramax’s success in developing, marketing, and distributing *Pulp Fiction* was a
11 watershed moment for independent films and spawned countless imitators eager to
12 replicate Miramax’s results.

13 18. *Pulp Fiction* was written and directed by Quentin Tarantino, and
14 produced by Lawrence Bender, in collaboration with Brown 25 Productions, Inc.
15 (“B25 Productions”).

16 19. Effective as of June 23, 1993, Tarantino and Bender entered into an
17 agreement (the “Original Rights Agreement”) with Miramax Film Corp.,
18 predecessor in interest to Miramax,¹ “relating to the production and financing” of
19 *Pulp Fiction* “and the acquisition by Miramax of the Film.” See Ex. A (Original
20 Rights Agreement).

21 20. Under the Original Rights Agreement, Tarantino and Bender granted to
22 Miramax, in exchange for valuable consideration, in perpetuity throughout the
23 universe, “all rights (including all copyrights and trademarks) in and to the Film
24 (and all elements thereof in all stages of development and production) now or
25 hereafter known including without limitation the right to distribute the Film in all
26 media now or hereafter known (theatrical, non-theatrical, all forms of television,
27

28 ¹ The Complaint refers to both Miramax entities as “Miramax,” as Miramax, LLC acquired the rights at issue from Miramax Film Corp. through a series of transactions.

1 home video, etc.),” excluding only a limited set of “Reserved Rights” which were
2 reserved to Tarantino as an individual. Ex. A, ¶¶ 2-4.

3 21. Tarantino’s Reserved Rights were limited to the “soundtrack album,
4 music publishing, live performance, print publication (including without limitation
5 screenplay publication, ‘making of’ books, comic books and novelization, in audio
6 and electronic formats as well, as applicable), interactive media, theatrical and
7 television sequel and remake rights, and television series and spinoff rights.” *Id.*,
8 ¶ 2. Those Reserved Rights were further “subject to restrictions set forth
9 elsewhere” in the Original Rights Agreement, including Miramax’s rights of first
10 negotiation and last matching rights with respect to certain deals. *Id.*, ¶¶ 2, 9.

11 22. While Miramax’s rights include “all rights . . . now or hereafter known
12 . . . in all media now or hereafter known,” Tarantino’s Reserved Rights, which are
13 a narrowly-drafted, static exception to Miramax’s broad, catch-all rights, do not
14 contain any forward-looking language. Tarantino’s Reserved Rights do not
15 encompass any rights or media that were not known at the time of the Original
16 Rights Agreement.

17 23. As of July 10, 1993, Tarantino and B25 Productions entered into a letter
18 agreement regarding *Pulp Fiction* (the “B25 Agreement”), under which Tarantino
19 granted B25 Productions the right to acquire certain of his rights “in, to, and
20 underlying the original screenplay.” *See* Ex. B (B25 Agreement). Pursuant to the
21 Original Rights Agreement, this transfer required Miramax’s consent.

22 24. In a letter to Tarantino’s counsel also dated as of July 10, 1993,
23 Miramax consented to Tarantino’s “transfer of certain rights” pursuant to the B25
24 Agreement, subject to the conditions that “nothing contained in the [B25
25 Agreement] shall diminish or derogate from the rights granted to Miramax under
26 the [Original Rights Agreement],” and “[i]n the event of any conflict between the
27 [B25 Agreement] and the [Original Rights Agreement], the [Original Rights
28

1 Agreement] shall control.” See Ex. C (Miramax Limited Consent Letter). Neither
2 Tarantino nor Tarantino’s counsel refuted or rejected Miramax’s letter.

3 25. Tarantino, Bender, B25 Productions, and Miramax also signed a letter
4 agreement written by B25 Productions (the “B25 Productions Letter”),
5 acknowledging that the rights granted by Tarantino to B25 Productions in the B25
6 Agreement “are not inconsistent with the rights granted by Tarantino to Miramax
7 under the [Original Rights Agreement].” See Ex. D (B25 Productions Letter), ¶ 2.
8 The B25 Productions Letter also acknowledged that upon delivery of *Pulp Fiction*
9 and Miramax Films’ related payment, Miramax would “acquire all of [B25
10 Productions’] rights in and to the Picture (other than any rights [B25 Productions]
11 may have in any Tarantino Reserved Rights)” *Id.*, ¶ 4.

12 26. Notwithstanding the B25 Productions Letter, on July 15, 1993,
13 Tarantino executed a notarized assignment (the “Tarantino-Miramax Assignment”)
14 dated as of June 23, 1993, for the benefit of Miramax, in which Tarantino assigned
15 to Miramax the:

16 sole and exclusive right under copyright, trademark or otherwise to
17 distribute, exhibit and otherwise exploit all rights (other than the
18 [Tarantino Reserved Rights]) in and to the motion picture entitled
19 “Pulp Fiction” (the “Work”) (and all elements thereof in all stages
20 of development and production) now or hereafter known including,
21 without limitation, the right to distribute the Work in all media now
or hereafter known (theatrical, non-theatrical, all forms of television
and “home video”) in perpetuity, throughout the Universe, as more
particularly set forth and upon and subject to the terms and
conditions in [the Original Rights Agreement].

22 Ex. E (Tarantino-Miramax Assignment).

23 27. Under the Tarantino-Miramax Assignment, Tarantino also agreed “to
24 secure or cause to be secured all United States copyrights in and to the Work,
25 including renewals thereof, if applicable, and hereby assigns the rights under said
26 renewal copyrights to [Miramax]” *Id.* The Tarantino-Miramax Assignment
27 was recorded with the U.S. Copyright Office on August 6, 1993 as document
28 number V2917P169.

1 28. Consistent with the Original Rights Agreement, in the Tarantino-
2 Miramax Assignment, Tarantino again reserved rights only to the “soundtrack
3 album, music publishing, live performance, print publication (including, without
4 limitation, screenplay publication, ‘making of’ books, comic books and
5 novelization, in audio and electronic formats as well, as applicable), interactive
6 media, theatrical and television sequel and remake rights, and television series and
7 spinoff rights.” *Id.*

8 29. On September 3, 1993, despite having already assigned to Miramax sole
9 and exclusive rights to *Pulp Fiction* (other than his Reserved Rights) under the
10 Original Rights Agreement and the Tarantino-Miramax Assignment, Tarantino
11 purported to assign to B25 Productions, in a Short-Form Assignment Agreement
12 executed only by Tarantino (the “Void Tarantino-B25 Assignment”) “all rights
13 (other than [Tarantino’s Reserved Rights] and those certain distribution rights in the
14 motion picture project currently entitled ‘Pulp Fiction’ . . . granted to Miramax Film
15 Corp.) . . . in, to, and underlying the original screenplay” Ex. F (Void
16 Tarantino-B25 Assignment). Miramax was not involved with the Void Tarantino-
17 B25 Assignment in any way, and did not consent to it.

18 30. On September 27, 1993, B25 Productions executed a notarized Notice,
19 dated as of September 20, 1993, acknowledging the terms of the Original Rights
20 Agreement and Miramax’s broad rights under it.

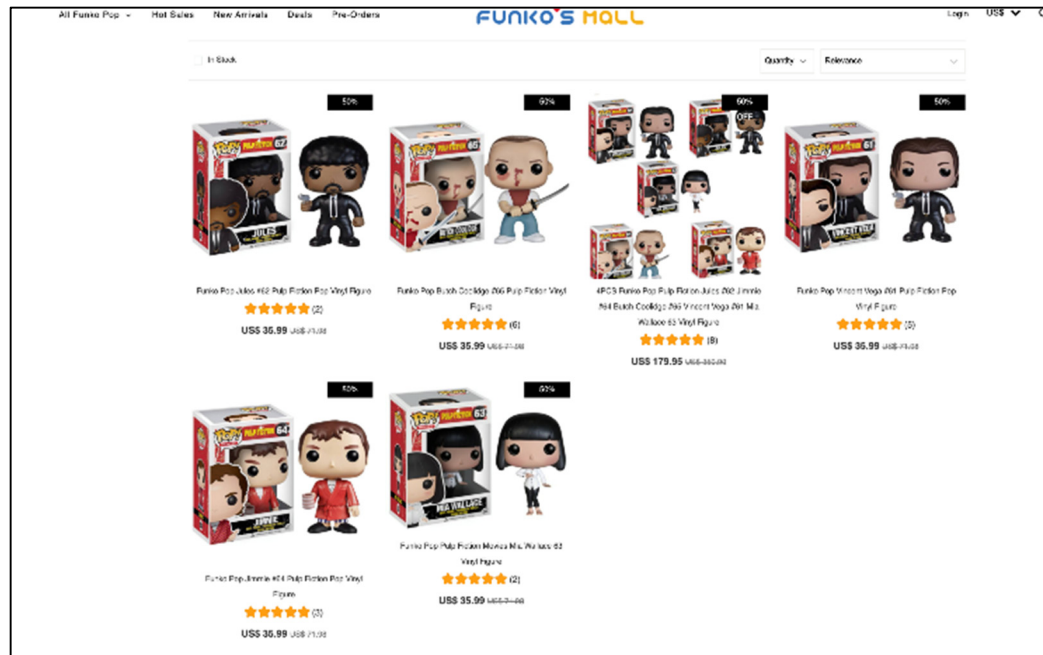
21 31. In addition to the rights Miramax acquired from Tarantino in the
22 Original Rights Agreement and the Tarantino-Miramax Assignment, as of July 1,
23 1994, B25 Productions executed an Instrument of Transfer granting to Miramax “all
24 rights of any kind and nature whatsoever in all media (other than [Tarantino’s
25 Reserved Rights]), in and to the theatrical motion picture currently entitled ‘PULP
26 FICTION’ (the ‘Picture’) and as further specified in [the Original Rights
27 Agreement, as amended] . . . for any and all media and by any means whether now
28 known or hereafter devised throughout the entire universe” (the “B25 Instrument of

1 Transfer”), which was recorded with the U.S. Copyright Office on July 14, 1994 as
2 Document Number V3005P270.

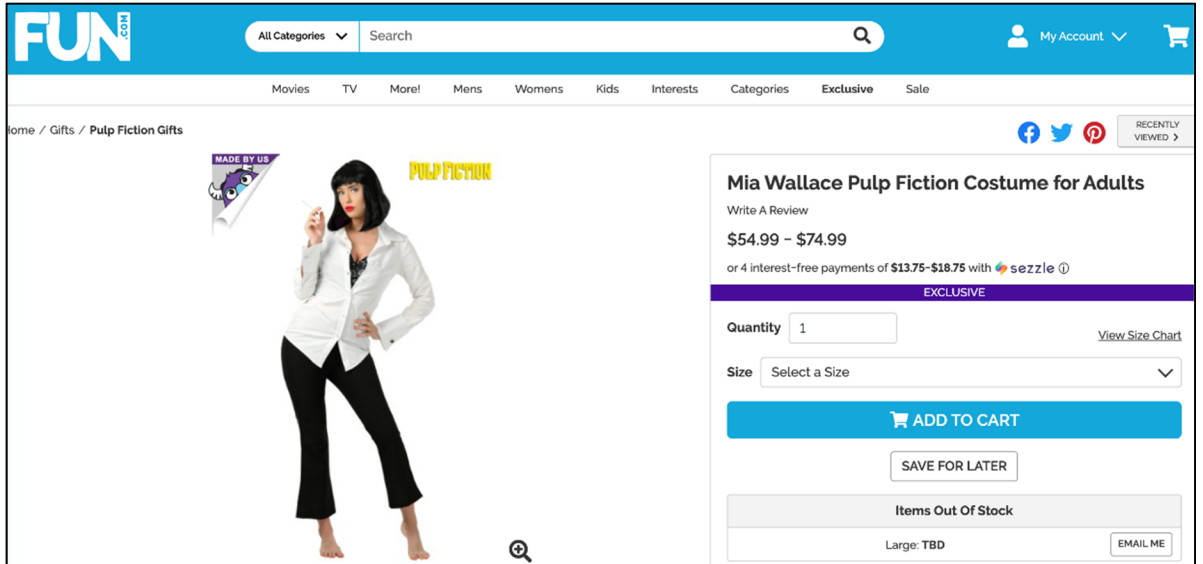
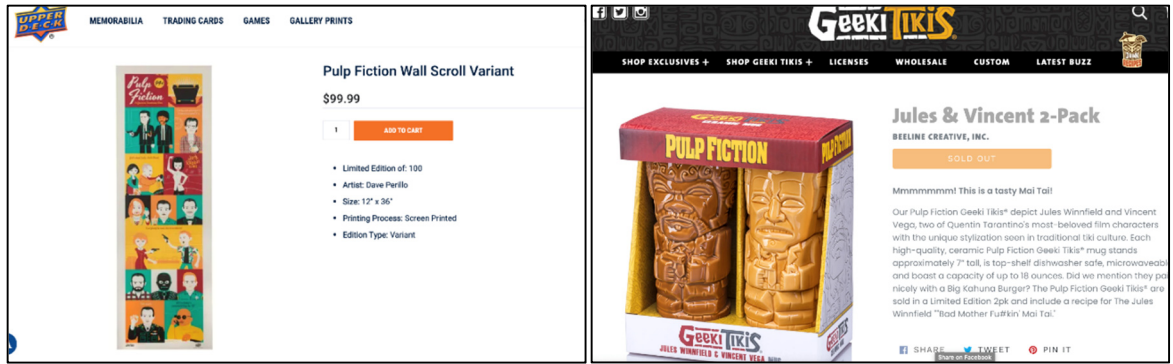
3 32. Having completed its purpose of producing *Pulp Fiction*, delivering the
4 film to Miramax, and assigning to Miramax all of B25 Productions’ rights relating
5 to *Pulp Fiction* and all its elements in all stages of development and production
6 (including, without limitation, all versions of the screenplay), excluding Tarantino’s
7 Reserved Rights, B25 Productions was dissolved on January 8, 1996.

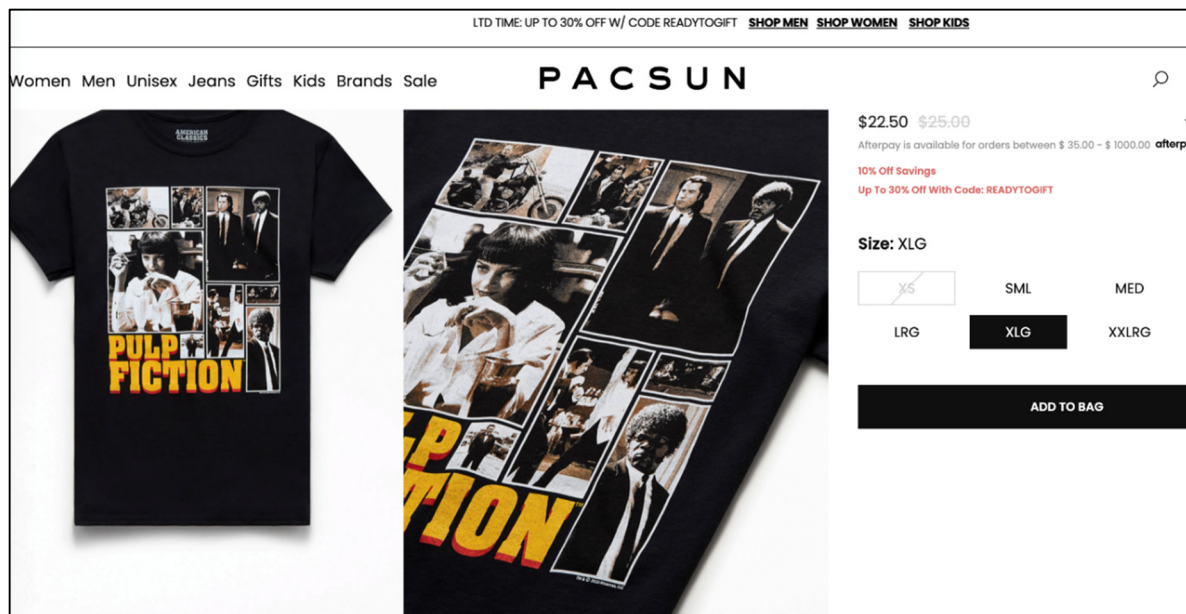
8 33. Among its broad rights to *Pulp Fiction*, Miramax owns various
9 registered and unregistered trademark rights in the name “PULP FICTION,”
10 including, without limitation, a United States registered trademark with Serial
11 Number 85883773 and Registration Number 5581017 (the “Pulp Fiction Mark”),
12 as well as the valid and subsisting United States copyrights registered with the U.S.
13 Copyright Office with Registration Numbers PA0000704507 and VA0001224051.

14 34. In line with these rights, Miramax has continuously used the Pulp
15 Fiction Mark in commerce throughout the United States in connection with the sale,
16 marketing, advertising, and promotion of a wide array of goods relating to *Pulp*
17 *Fiction*. Examples include the following:



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TARANTINO'S INFRINGING CONDUCT

35. On November 2, 2021, Secret Network (a.k.a. SCRT Labs) issued a press release² (the “Press Release”) announcing that Tarantino “will auction off 7 uncut Pulp Fiction Scenes as Secret NFTs.”

36. An NFT (or non-fungible token) is a unique, non-fungible digital asset recorded on a blockchain (a type of distributed ledger) that can, as in the case of the Pulp Fiction NFTs, represent and certify its owner’s right to, and enable its owner to, access specific digital content associated with the NFT.

37. Despite the sweeping rights granted to Miramax under the Original Rights Agreement, the Tarantino-Miramax Assignment, and the B25 Instrument of Transfer, Tarantino did not consult Miramax regarding his sale of the Pulp Fiction NFTs.

38. The Press Release also noted that the initial auctions would “occur on OpenSea, the world’s largest NFT marketplace” and described the Pulp Fiction NFTs as containing “one-of-a-kind” content that had “never been seen or heard before, . . . includ[ing]: the uncut first handwritten scripts of ‘Pulp Fiction’ and

² <https://www.globenewswire.com/news-release/2021/11/02/2325448/0/en/Quentin-Tarantino-Revealed-as-Iconic-Artist-Behind-First-Ever-Secret-NFTs-Showcasing-Never-Before-Seen-Work-Revealed-Only-to-NFT-Owner.html>

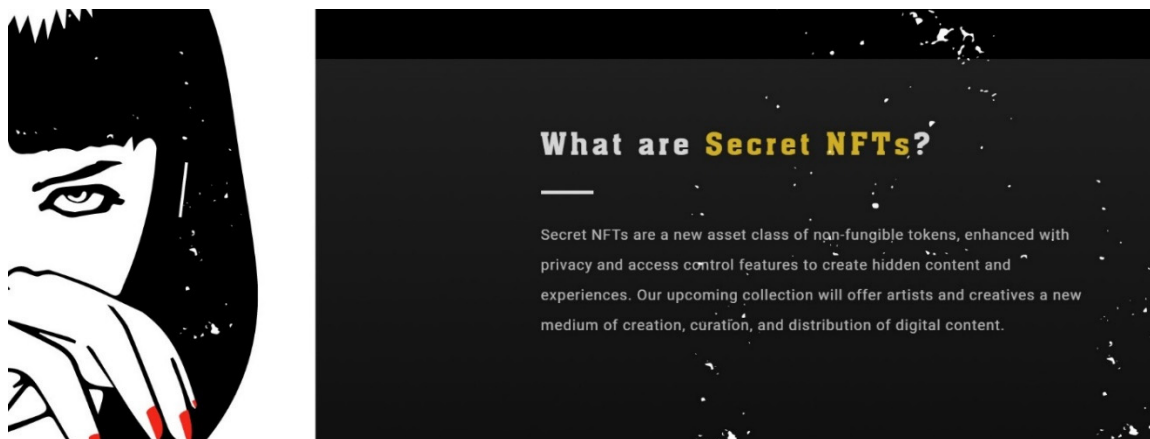
1 exclusive custom commentary from Tarantino, revealing secrets about the film and
2 its creator.” Moreover, according to the Press Release, even “[t]he public metadata
3 of the NFT – the ‘front cover’ of this exclusive content – is rare in its own right.”
4 In other words, each of the seven Pulp Fiction NFTs would be “a unique, never-
5 before-seen, public-facing work of art.”

6 39. Tarantino publicly expressed his excitement around the Pulp Fiction
7 NFTs, and was quoted in the Press Release as being “excited to be presenting these
8 exclusive scenes from PULP FICTION to fans.” He also reportedly announced the
9 Pulp Fiction NFTs at the NFT.NYC crypto-art conference in New York City on
10 November 2, 2021.³ The substance of the Press Release and Tarantino’s
11 announcement were widely reported in the media.

12 40. In collaboration with SCRT Labs, Tarantino established a website
13 promoting the Pulp Fiction NFTs: <https://tarantinonfts.com/> (the “Website”). The
14 promotional website prominently uses the film’s name, “Pulp Fiction,” and uses
15 unauthorized images of characters from the film: Jules Winnfield (played by Samuel
16 L. Jackson), Vincent Vega (played by John Travolta), and Mia Wallace (played by
17 Uma Thurman).



28 ³ <https://news.artnet.com/art-world/quentin-tarantino-is-minting-seven-pulp-fiction-scenes-as-nfts-that-will-reveal-secrets-about-his-vision-for-the-film-2029816>



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8 41. According to the Website, “[t]he collection holds secrets from Pulp
9 Fiction, one of the most influencing artworks of the ’90s. Each NFT contains one
10 or more previously unknown secrets of a specific iconic scene from Pulp Fiction.
11 The privileged person who will purchase one of these few and rare NFTs will get a
12 hold of those secrets and a glimpse into the mind and the creative process of Quentin
13 Tarantino.” The site notes that Tarantino “is enamored with Pulp Fiction – a
14 timeless creation, and as such wanted to give the public a new glimpse into the
15 iconic scenes of the film.”

16 42. In short, Defendants seek to capitalize, unilaterally, on Miramax’s
17 rights to *Pulp Fiction*. Defendants’ infringing acts have caused and are likely to
18 cause confusion, mistake, and deception among the relevant consuming public as to
19 the source of the Pulp Fiction NFTs, and have deceived and are likely to deceive
20 the relevant consuming public into believing, mistakenly, that the Pulp Fiction
21 NFTs originate from, are associated or affiliated with, or are otherwise authorized
22 by Miramax.

23 **TARANTINO’S REFUSAL TO STOP THE UNLAWFUL CONDUCT**

24 43. On November 4, 2021, Miramax sent a cease and desist letter to
25 Tarantino asserting, *inter alia*, Miramax’s rights (subject only to Tarantino’s
26 Reserved Rights) in *Pulp Fiction*, including, without limitation, all versions of the
27 screenplay (including all scenes and elements thereof, regardless of whether they
28 were filmed and/or incorporated into the film) (the “Cease & Desist Letter”). The

1 Cease & Desist Letter also put Tarantino on notice that his purported licensing of
2 rights to develop and sell the Pulp Fiction NFTs constitutes a material breach of the
3 Original Rights Agreement, as well as copyright infringement.

4 44. In the Cease & Desist Letter, Miramax demanded that Tarantino (i)
5 immediately discontinue and terminate any and all efforts to offer and/or make
6 available for sale and/or sell any Pulp Fiction NFTs or any other elements of *Pulp*
7 *Fiction*, (ii) to the extent that Tarantino has entered into any agreement therefor,
8 that it be immediately withdrawn and terminated, and (iii) issue a public statement
9 that the previously announced launch and sale of the Pulp Fiction NFTs is cancelled
10 and will not proceed. The Cease & Desist Letter also demanded that Tarantino
11 provide a copy of any agreement(s) entered into by Tarantino relating to the sale of
12 the Pulp Fiction NFTs and confirmation of their termination.

13 45. The next day, Tarantino's counsel emailed Miramax, confirming
14 several statements from the Press Release, namely, that the Pulp Fiction NFTs
15 would be a "collection consisting of 7 NFTs, each containing a high-resolution
16 digital scan of Quentin's original handwritten screenplay pages for a single scene
17 from his screenplay for Pulp Fiction."

18 46. According to Tarantino's counsel, there would be "no other
19 embellishment or additions to the actual screenplay scans themselves." However,
20 each NFT will include a "drawing that will be inspired by some element from the
21 scene." Tarantino's counsel has contended that Tarantino was acting within his
22 "Reserved Rights," specifically the right to "screenplay publication" (which is
23 written in the definition of Tarantino's Reserved Rights as a subset of his "print
24 publication" Reserved Right). However, the proposed sale of a few original script
25 pages or scenes as an NFT is a one-time transaction, which does not constitute
26 publication, and in any event does not fall within the intended meaning of "print
27 publication" or "screenplay publication." The right to sell NFTs of such excerpts
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1 of any version of the screenplay to *Pulp Fiction* is owned and controlled by
2 Miramax.

3 47. Days after being told to cease and desist, Tarantino’s plans to sell NFTs
4 relating to Miramax’s intellectual property intensified and expanded. On November
5 11, 2021, a Twitter account for the sale—@TarantinoNFTs—announced, with
6 unauthorized images of characters from *Pulp Fiction*, that the *Pulp Fiction* NFTs
7 will be sold in December 2021, and that Tarantino will also sell “the Artifacts
8 Collection of up to ten iconic props from Tarantino’s films,” including “one from
9 *Pulp Fiction*.”

10 48. In a tweet claiming that the Artifacts Collection “is curated and directed
11 by” Tarantino, the account uses an animated scene from a different Miramax film,
12 *Kill Bill: Vol. 2*, depicting the character Pai Mei (played by Gordon Liu).



25 49. In another tweet, @TarantinoNFTs promotes the sale of *Pulp Fiction*’s
26 “Royale with Cheese” scene,” using a fake *Pulp Fiction* VHS tape with
27 unauthorized imagery from the film.
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50. As of the date of filing of this Complaint, the media continues to report Tarantino’s impending release of the *Pulp Fiction* NFTs, and Tarantino and Tarantino’s counsel have not complied with the Cease & Desist Letter’s demands, necessitating the filing of this lawsuit. Tarantino’s conduct may mislead other creators into believing they have rights to exploit Miramax films through NFTs and other emerging technologies, when in fact Miramax holds those rights for its films.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

51. Miramax repeats and realleges paragraphs 1 through 50 hereof, as if fully set forth herein.

52. Pursuant to the Original Rights Agreement and the subsequent Tarantino-Miramax Assignment, Tarantino, in exchange for valuable consideration, granted and assigned to Miramax in perpetuity throughout the universe, “all rights (including all copyrights and trademarks) in and to the Film (and all elements

1 thereof in all stages of development and production) now or hereafter known
2 including without limitation the right to distribute the Film in all media now or
3 hereafter known (theatrical, non-theatrical, all forms of television, home video,
4 etc.),” excluding only a limited set of Tarantino’s “Reserved Rights.”

5 53. Those grants and assignments prohibit Defendants from exploiting or
6 licensing those same rights to develop and sell the Pulp Fiction NFTs. Miramax
7 has been damaged and will continue to sustain damages from Defendants’
8 exploitation of rights to *Pulp Fiction* that belong to Miramax. Defendants’ conduct
9 in connection with the development and sale of the Pulp Fiction NFTs is a
10 substantial factor in causing Miramax’s harm.

11 **SECOND CLAIM FOR RELIEF**

12 **(Copyright Infringement Under 17 U.S.C. § 501)**

13 54. Miramax repeats and realleges paragraphs 1 through 53 hereof, as if
14 fully set forth herein.

15 55. The finished motion picture *Pulp Fiction* and all elements thereof in all
16 stages of development and production are all original works containing
17 copyrightable subject matter for which copyright protection exists under the
18 Copyright Act, 17 U.S.C. § 101, et. seq. Except for Tarantino’s limited set of
19 Reserved Rights, Miramax is the exclusive owner of rights under copyright in and
20 to the motion picture *Pulp Fiction*, and all elements thereof in all stages of
21 development and production. Miramax owns copyrights in and to *Pulp Fiction*
22 (and, pursuant to the Original Rights Agreement and the Tarantino-Miramax
23 Assignment, “all elements thereof in all stages of development and production”),
24 including, without limitation, the registered United States copyrights thereto with
25 U.S. Copyright Office registration numbers PA0000704507 and VA0001224051,
26 and the copyrights assigned to Miramax in the Tarantino-Miramax Assignment and
27 the B25 Instrument of Transfer, which are recorded with the U.S. Copyright Office
28 as document numbers V2917P169 and V3005P270, respectively.

1 56. Through Defendants’ conduct alleged herein, including Defendants’
2 sale of rights relating to *Pulp Fiction*, and preparation and reproduction of derivative
3 works based on *Pulp Fiction* without Miramax’s permission, Defendants have
4 directly infringed Miramax’s exclusive rights in *Pulp Fiction* and the elements
5 thereof in violation of Section 501 of the Copyright Act, 17 U.S.C. § 501.

6 57. Defendants’ infringing conduct alleged herein was and continues to be
7 willful and with full knowledge of Miramax’s rights relating to *Pulp Fiction*, and
8 has enabled Defendants illegally to obtain profit therefrom.

9 58. As a direct and proximate result of Defendants’ infringing conduct
10 alleged herein, Miramax has been harmed and is entitled to damages in an amount
11 to be proven at trial. Pursuant to 17 U.S.C. § 504(b), Miramax is also entitled to
12 recovery of Defendants’ profits attributable to Defendants’ infringing conduct
13 alleged herein, including from any and all sales of products incorporating or
14 embodying the copyrighted work, and an accounting of and a constructive trust with
15 respect to such profits.

16 59. Alternatively, Miramax is entitled to the maximum statutory damages
17 pursuant to 17 U.S.C. § 504(c) for Defendants’ willful infringing conduct, and for
18 such other amount as may be proper pursuant to 17 U.S.C. § 504(c).

19 60. As a direct and proximate result of the Defendants’ infringing conduct
20 alleged herein, Miramax has sustained and will continue to sustain substantial,
21 immediate, and irreparable injury, for which there is no adequate remedy at law.
22 On information and belief, unless Defendants’ infringing conduct is enjoined by this
23 Court, Defendants will continue to infringe the copyrighted work. Miramax
24 therefore is entitled to permanent injunctive relief restraining and enjoining
25 Defendants’ ongoing infringing conduct.
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27
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1 **THIRD CLAIM FOR RELIEF**

2 **(Trademark Infringement Under 15 U.S.C. § 1114)**

3 61. Miramax repeats and realleges paragraphs 1 through 60 hereof, as if
4 fully set forth herein.

5 62. Defendants' unauthorized use of the Pulp Fiction Mark alleged herein
6 is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of
7 the Pulp Fiction NFTs, and is likely to cause consumers to believe, contrary to fact,
8 that the Pulp Fiction NFTs are sold, authorized, endorsed, or sponsored by
9 Miramax, or that Defendants are in some way affiliated with or sponsored by
10 Miramax. Defendants' conduct therefore constitutes trademark infringement in
11 violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

12 63. Upon information and belief, Defendants have committed the foregoing
13 acts of infringement with full knowledge of Miramax's prior rights in the Pulp
14 Fiction Mark and with the willful intent to cause confusion and trade on Miramax's
15 goodwill.

16 64. Defendants' conduct is causing immediate and irreparable harm and
17 injury to Miramax, and to its goodwill and reputation, and will continue to both
18 damage Miramax and confuse the public unless enjoined by this court. Miramax
19 has no adequate remedy at law.

20 65. Miramax is entitled to, among other relief, injunctive relief and an
21 award of actual damages, Defendants' profits, enhanced damages and profits,
22 reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the
23 Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-
24 judgment interest.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Unfair Competition Under 15 U.S.C. § 1125(a))**

27 66. Miramax repeats and realleges paragraphs 1 through 65 hereof, as if
28 fully set forth herein.

1 67. Defendants’ unauthorized use of the Pulp Fiction Mark alleged herein
2 is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of
3 the Pulp Fiction NFTs, and is likely to cause consumers to believe, contrary to fact,
4 that the Pulp Fiction NFTs are sold, authorized, endorsed, or sponsored by
5 Miramax, or that Defendants are in some way affiliated with or sponsored by
6 Miramax.

7 68. Defendants’ unauthorized use in commerce of the Pulp Fiction Mark as
8 alleged herein constitutes use of a false designation of origin and misleading
9 description and representation of fact.

10 69. Upon information and belief, Defendants’ conduct as alleged herein is
11 willful and is intended to and is likely to cause confusion, mistake, or deception as
12 to the affiliation, connection, or association of Defendants with Miramax.

13 70. Defendants’ conduct as alleged herein constitutes unfair competition in
14 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

15 71. Defendants’ conduct is causing immediate and irreparable harm and
16 injury to Miramax, and to its goodwill and reputation, and will continue to both
17 damage Miramax and confuse the public unless enjoined by this court. Miramax
18 has no adequate remedy at law.

19 72. Miramax is entitled to, among other relief, injunctive relief and an
20 award of actual damages, Defendants’ profits, enhanced damages and profits,
21 reasonable attorneys’ fees, and costs of the action under Sections 34 and 35 of the
22 Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-
23 judgment interest.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment ordering as follows:

Damages in an amount to be determined at trial, or (at Miramax’s election) the maximum allowable statutory damages and such other amounts as may be proper, together with prejudgment and post-judgment interest;

Declaratory relief that Defendants have breached their agreements with Miramax, infringed Miramax’s copyrights in and to *Pulp Fiction*, and infringed Miramax’s trademark rights in and to *Pulp Fiction*;

Injunctive relief preventing further violations of Miramax’s rights in and to *Pulp Fiction*;

Attorneys’ fees;

Miramax’s costs of suit; and

Such other relief as the Court may deem just.

Dated: November 16, 2021

PROSKAUER ROSE LLP
BART H. WILLIAMS
KYLE A. CASAZZA
SETH H. VICTOR
ALYSON C. TOCICKI

JEFFREY D. NEUBURGER
(applying for *pro hac vice*
admission)
WAIL CHOY
(applying for *pro hac vice*
admission)

By: _____
/s/ Bart. H. Williams
Bart H. Williams

Attorneys for Plaintiff,
MIRAMAX, LLC

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in the above-entitled action on all claims for relief for which plaintiff is entitled to a trial by jury.

Dated: November 16, 2021

PROSKAUER ROSE LLP
BART H. WILLIAMS
KYLE A. CASAZZA
SETH H. VICTOR
ALYSON C. TOCICKI

JEFFREY D. NEUBURGER
(applying for *pro hac vice*
admission)
WAIL. CHOY
(applying for *pro hac vice*
admission)

By: _____
/s/ Bart H. Williams
Bart H. Williams

Attorneys for Plaintiff,
MIRAMAX, LLC

EXHIBIT

C

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2 Attorney for Plaintiff
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4 Miami, FL 33156
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5 Fax: 305-670-6669

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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **MILES PARKS MCCOLLUM**)
11 professionally known as)
12 **LIL YACHTY,**)

13 Plaintiff,)

14 v.)

15 **OPULOUS**, a foreign entity, and)
16 **DITTO LTD, d/b/a DITTO**)
17 **MUSIC**, a foreign entity, and)
18 **LEE JAMES PARSONS**, a)
citizen of a foreign country.)

19 Defendants.)
20 _____ /

CASE NO:

COMPLAINT FOR:

**1) FEDERAL TRADEMARK
INFRINGEMENT, 15 U.S.C. § 1114**

**2) FEDERAL UNFAIR COMPETITION AND
FALSE REPRESENTATION OF
AFFILIATION, 15 U.S.C. § 1125 (a)**

**3) VIOLATION OF CALIFORNIA
STATUTORY RIGHT OF PUBLICITY
CIVIL CODE § 3344**

**4) VIOLATION OF THE CALIFORNIA
COMMON LAW RIGHT OF PUBLICITY**

**5) UNFAIR COMPETITION UNDER
CALIFORNIA BUSINESS & PROFESSIONS
CODE § 17200**

DEMAND FOR JURY TRIAL

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25 Plaintiff, MILES PARKS MCCOLLUM, professionally known as LIL YACHTY, hereby
26 sues the Defendants, OPULOUS, DITTO LTD., (hereinafter, "DITTO MUSIC"), and LEE JAMES
27 PARSONS, (collectively, "Defendants"), and states as follows:
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JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity of citizenship) because the Plaintiff is a citizen of the State of Georgia and the Defendants are foreign entities and a foreign citizen. Additionally, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (federal question) because Plaintiff is making claims for Federal Trademark Infringement pursuant to 15 U.S.C. § 1114 and for Federal Unfair Competition and False Representation of Affiliation pursuant to 15 U.S.C. 1125(a). Lastly, this Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a) because such claims are so closely related to the federal claim that they form a single case or controversy.
2. This Court has personal jurisdiction over Defendants, OPULOUS, DITTO MUSIC and LEE JAMES PARSONS, because, on information and belief, all Defendants (a) disseminated and distributed the tortious advertisements and publications within the State of California; (b) regularly transact and conduct business within the State of California, and/or (c) have otherwise made or established contacts within the State of California sufficient to permit the exercise of personal jurisdiction, including but not limited to maintaining employees and one or more officers in this jurisdiction.
3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 (b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this jurisdiction. Alternatively, venue in this jurisdiction is proper pursuant to 28 U.S.C. § 1391 (b)(2) because there is no other district which this action could otherwise be brought.

NATURE OF THIS ACTION

4. This is an action for trademark infringement under the law of the United States (15 U.S.C. § 1114) unfair competition and false representation of affiliation under the law of the United States (15 U.S.C. § 1125(a)), violation of California’s statutory right of publicity (Civil Code § 3344), violation of the California common law right of publicity, and for unlawful,

1 unfair, and fraudulent competition under California’s Business and Professions Code §
2 17200.

- 3
4 5. In its most condensed version, the facts giving rise to this claim are as follows: Defendants,
5 collectively, published numerous commercial advertisements and promotions and made
6 multiple statements to the media falsely representing that Plaintiff, LIL YACHTY - who is
7 an internationally acclaimed recording artist, style icon, brand ambassador and entrepreneur
8 – was involved, affiliated, and connected with the launching and offering of Defendants’
9 new products and services. In the publication of these commercial materials, Defendants
10 utilized the name, trademark, and photograph of Plaintiff, all without Plaintiff’s consent.
11 Defendants then collectively and maliciously utilized the alleged affiliation and
12 involvement of Plaintiff as their flagship artist partnership to successfully raise substantial
13 venture capital funds (represented as over \$6.5 million), yet never remitted any monies to
14 Plaintiff.

15 THE PARTIES

16 Plaintiff, Miles Parks McCollum, professionally known as Lil Yachty

- 17 6. Plaintiff, Miles Parks McCollum, is an individual, sui juris, and is a resident of and is
18 domiciled in Atlanta, Georgia.
- 19 7. Plaintiff is professionally known as Lil Yachty, and Plaintiff owns the U.S. federally
20 registered trademark for the name “Lil Yachty”, serial number 87029468, which was
21 registered on June 20, 2017. A true and correct copy of the registration certificate is
22 attached here as “Exhibit A”.
- 23 8. Plaintiff, who is referred to hereinafter as “LIL YACHTY”, is an internationally acclaimed
24 recording artist, singer, songwriter, rapper, actor, brand ambassador, style icon, and
25 entrepreneur who, at only 24 years old, has achieved tremendous levels of success and
26 fame.
- 27 9. Hailed as a “mogul” by Rolling Stone magazine and touted by the Guardian as being “one
28 of the most recognizable faces in contemporary hip-hop”, LIL YACHTY first rose to

1 prominence in the music industry in 2015 at the age of 17, and since that time has released
2 four full length studio albums and three mixtapes, achieving both critical acclaim and
3 substantial commercial success. Plaintiff's work has received numerous prestigious awards
4 nominations, including for the Grammys, the Billboard Music Awards, and the MTV Video
5 Music Awards. As of the current date, 10.5 million listeners stream LIL YACHTY's music
6 each month on Spotify, where well over a billion of his songs have been streamed in total.
7 On YouTube, there are 2.6 million people who subscribe to Plaintiff's channel, where his
8 music videos and other content have received over 915 million views. As a performer, LIL
9 YACHTY routinely performs in front of sell-out crowds of tens of thousands of fans at
10 concerts and music festivals.

11 10. Outside of his work as a musician and recording artist, LIL YACHTY has also invested
12 substantial time, energy, finances, and effort into building a respected and well recognized
13 brand as well as a diverse portfolio of professional and commercial engagements. With a
14 distinctive style and appearance that renders him instantly recognizable to tens of millions
15 of people worldwide, LIL YACHTY has served as a brand ambassador and has appeared
16 in commercials and promotions for such companies such as Sprite, Adidas, and Target. He
17 is a creative designer for the hugely popular Nautica clothing company, where there is a
18 line of clothing released under the LIL YACHTY brand name. Plaintiff has modeled for
19 Kanye West's billion-dollar fashion line, Yeezy, and he has appeared in numerous feature
20 length films as an actor, a voice actor, as well as in portrayals of himself. He has launched
21 his own cryptocurrency, \$YACHTY, which sold out in the first 21 minutes it went on sale.
22 Plaintiff also has an extremely large social media presence, with over 10.4 million followers
23 on Instagram, 5.4 million followers on Twitter, and 171 million likes on TikTok.

24 11. As a result of the foregoing, Plaintiff's name, trademark, likeness, identity, and persona
25 have become widely known by a substantial segment of the public in the United States and
26 internationally.

27 12. Plaintiff has selectively endorsed and partnered with, and continues to selectively endorse
28 and partner with, a wide variety of products and services.

1 13. Plaintiff's name, trademark, likeness, identity, and persona have become, and are, valuable
2 assets that symbolize Plaintiff and the nature and quality of the various products and
3 services which he endorses and engages with.

4 14. Plaintiff regularly receives substantial financial offers requested permission for, and
5 seeking the use of, Plaintiff's name, trademark, likeness, identity and persona for licensing,
6 endorsing, marking and promoting products, services, and performances.

7 15. Plaintiff maintains strict control over the manner in which his name, trademark, likeness,
8 identity and persona are used, and he exercises careful consideration in selecting and
9 approving products, services or performances that he permits to license or use his name,
10 trademark, likeness, identity and persona.

11
12 **Defendant, Opulous**

13 16. Defendant, OPULOUS, is a business entity formed and headquartered in the Central Region
14 of Singapore.

15 17. At all material times, Defendant, OPULOUS, regularly conducted and continues to
16 regularly conduct substantial business within this jurisdiction.

17 18. OPULOUS was founded in or around 2021 by Defendant, LEE JAMES PARSONS, who
18 serves as its CEO and primary owner. Defendant, LEE JAMES PARSONS, is also the
19 founder and CEO of Defendant, DITTO MUSIC.

20 19. OPULOUS markets itself as a company which "brings Decentralized Finance to the music
21 industry, changing how artists access the funding they need and providing a launchpad for
22 the first music copyright-backed NFTs". (See, www.opulous.org).

23 20. By way of background, NFTs, or non-fungible tokens, are unique pieces of digital content
24 linked to the blockchain, which is the digital database underpinning cryptocurrencies such
25 as Bitcoin and Ethereum. NFTs have been liked to digital passports because the unique,
26 non-transferable identity for each token distinguishes it from all other tokens and allows
27 the token to be efficiently and securely bought, sold, and traded. One of the early and
28

1 prominent uses of NFTs has been the creation of an entire market for tokenized digital art,
2 but NFTs have utility for real-world tangible assets as well.

3 21. In essence, Defendant, OPULOUS's primary product / service is the offering of ownership
4 interest in a musician's copyrighted work to the public at large, using NFTs as the means
5 by which the ownership interest is transferred and maintained.

6 22. Of course, it is axiomatic that in order to offer the ownership interest to any musician's
7 copyrighted work, Defendant, OPULOUS, must first have the agreement and consent of
8 the musician at issue to sell the copyright to his or her work, with the musician in turn
9 entitled to a share of the proceeds from the sale thereof.

10
11 **Defendant, Ditto Music**

12 23. DITTO MUSIC is a business entity formed and headquartered in Liverpool, England.

13 24. At all material times, Defendant, DITTO MUSIC, regularly conducted and continues to
14 regularly conduct substantial business within this jurisdiction.

15 25. DITTO music was also founded by Defendant, LEE JAMES PARSONS, who serves as its
16 CEO and its primary owner.

17 26. DITTO MUSIC serves primarily markets itself as an online music distribution company,
18 and also purports to offer its clientele record label and music publishing services.

19
20 **Defendant, Lee James Parsons**

21 27. Defendant, LEE JAMES PARSONS, is a resident of London, England.

22 28. At all material times, Defendant, LEE JAMES PARSONS, regularly conducted and
23 continues to regularly conduct substantial business within this jurisdiction.

24 29. Defendant, LEE JAMES PARSONS, is the founder, chief executive officer and primary
25 owner of Defendants, OPULOUS and DITTO MUSIC.
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DEFENDANT’S WRONGFUL CONDUCT

1
2 30. In early 2021, Defendants, DITTO MUSIC and LEE JAMES PARSONS founded
3 OPULOUS, and quickly began searching for high profile recording artists to partner with
4 for OPULOUS’ commercial launch of music copyright-backed NFTs.

5
6 31. On or about May 19, 2021, Defendant, LEE JAMES PARSONS, on behalf of both
7 OPULOUS and DITTO MUSIC, sought an introduction to Plaintiff’s management to
8 discuss having Plaintiff be involved in the inaugural launching of OPULOUS’s products
9 and services.

10 32. On May 24, 2021, a conference call / virtual meeting took place involving, inter alia,
11 Plaintiff’s management, LEE JAMES PARSONS, and Fernando Cruz, who serves as Chief
12 Marketing Officer for OPULOUS. This meeting was a general introductory meeting
13 wherein Defendant, LEE JAMES PARSONS, and his employee, Fernando Cruz, pitched
14 Plaintiff’s management on Plaintiff being involved with the OPULOUS platform. During
15 this meeting, no agreement or deal terms for Plaintiff’s involvement was ever reached.

16 33. The next day, on May 25, 2021, another conference call / virtual meeting took place, and
17 on this call, Plaintiff, LIL YACHTY, joined with his management, and OPULOUS and
18 DITTO MUSIC were again represented by LEE JAMES PARSONS and Fernando Cruz.
19 This meeting was also a general introductory meeting wherein Defendant, LEE JAMES
20 PARSONS, and his employee, Fernando Cruz, generally pitched Plaintiff, LIL YACHTY,
21 on the OPULOUS platform. Similarly, during this meeting, no agreement or deal terms for
22 Plaintiff’s involvement was ever reached.

23 34. Subsequent to the conference call / virtual meeting on May 24, 2021, there were no further
24 communications between the parties, and accordingly no agreement or deal terms for
25 Plaintiff’s involvement in the Defendants’ launch of the OPULOUS platform was ever
26 reached.

27 35. Notwithstanding, just seven (7) days later, on June 1, 2021, Defendants collectively
28 launched a press and advertisement campaign falsely representing that Plaintiff, LIL

1 YACHTY, was affiliated, connected, and associated with the OPULOUS platform, and
2 further falsely representing that Plaintiff’s copyrighted works would be offered for sale
3 through the OPULOUS platform. In these publications, Defendants prominently displayed
4 Plaintiff’s name, trademark, and photograph, all without Plaintiff’s permission or consent.
5 Specifically:

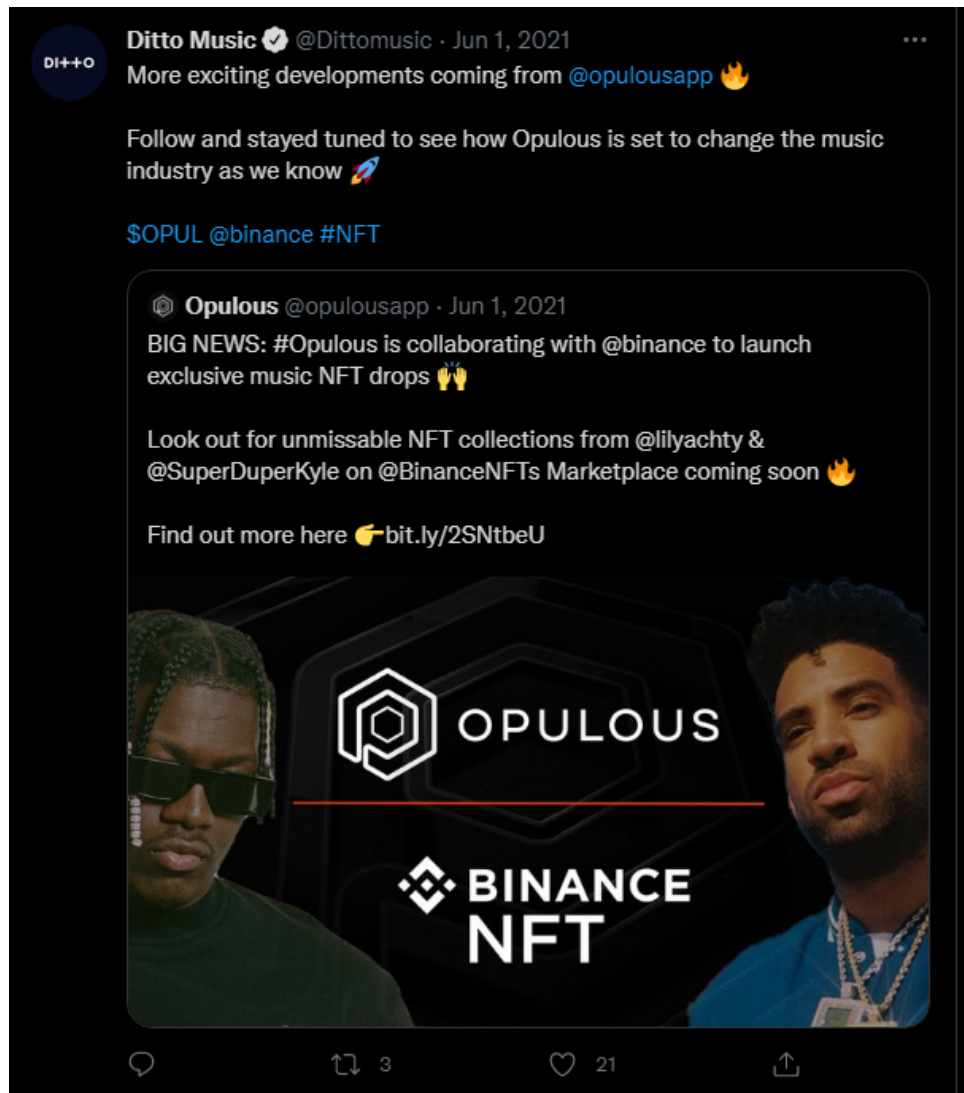
- 6 • On June 1, 2021, Defendant, OPULOUS, issued a press release through its own
7 website, attached here as “Exhibit B”, wherein it touted that “[r]ight now...we’ll be
8 kicking things off with a series of unmissable NFT drops **led by world-famous artists**
9 **including Lil Yachty...**”(emphasis added). Defendant, OPULOUS, through its
10 Twitter account, @opulousapp, then published a link to view the press release along
11 with a photograph of Plaintiff. See:



26 [Note that Plaintiff, LIL YACHTY, is the depicted on the left in the above screenshot)

- 27 • Similarly, on June 1, 2021, Defendant, DITTO MUSIC, published through its Twitter
28 account, @Dittomusic, the same graphic showing Plaintiff’s photograph, using his

1 name and trademark, and falsely representing that Plaintiff was affiliated with
2 Defendants' collective launch of OPULOUS. See:

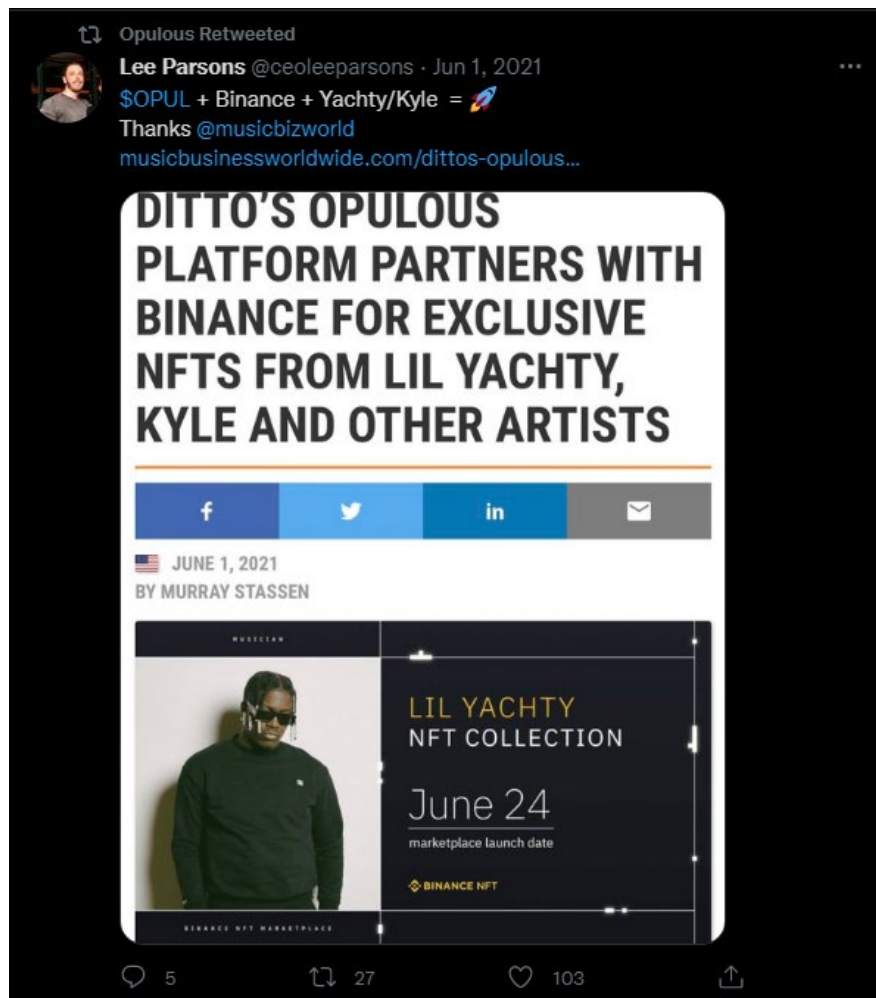


- 21
- 22 • Also on June 1, 2021, Defendant, LEE JAMES PARSONS, published from his Twitter
23 account, @ceoleparsons, an additional message which contained Plaintiff's image
24 and name and again falsely represented Defendants' non-existent affiliation with
25 Plaintiff. Making matters more egregious, in this post, Defendant, LEE JAMES
26 PARSONS, including a link to an article published by Music Business Worldwide
27 which contained numerous statements made by LEE JAMES PARSONS both falsely
28 representing Plaintiff's affiliation and involvement with the OPULOUS platform, as
well as touting the significance to the OPULOUS platform of having an artist as high
profile and respected as Plaintiff involved with the launch of OPULOUS's copyright

1 NFT offerings. See, for example, the following quotes from within the article, a full
2 copy of which is attached here as “Exhibit C”,

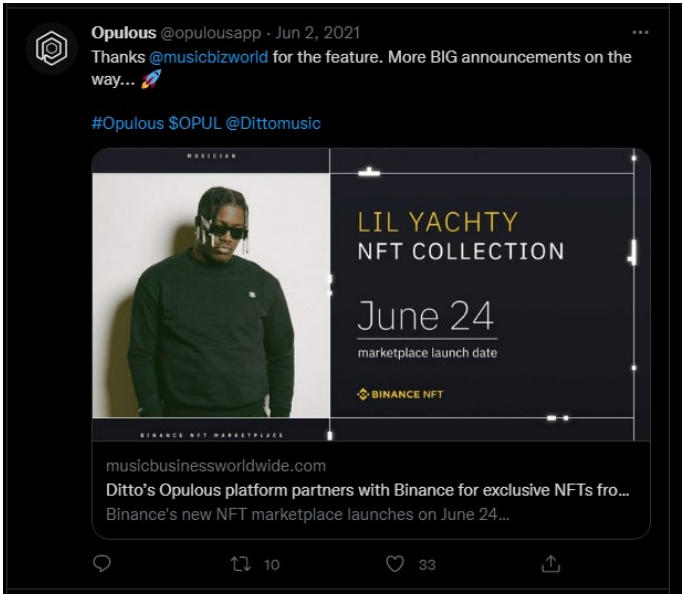
- 3
- 4 ■ “Opulous plans to launch a series of exclusive music NFT drops on Binance with
5 **‘major artists’ led by Lil Yachty...**” (emphasis added)
 - 6 ■ “I’ve been passionate about the applications of crypto and blockchain technology
7 within the music industry for many years, and believe **the launch of NFT drops**
8 **like these will help to strengthen the connection between artists and their fans**
9 **well into the future**”. (direct quote of Defendant, LEE JAMES
10 PARSONS)(emphasis added).

11 See also, a screenshot of Defendant, LEE JAMES PARSON’s twitter post:

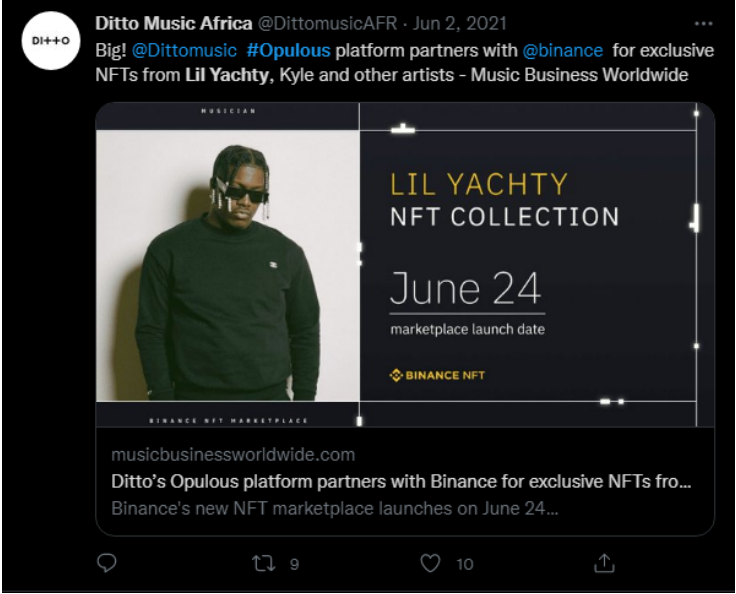


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- On June 2, 2021, Defendant, OPULOUS, again disseminated the Music Business Worldwide article attached here as “Exhibit C”, and again published Plaintiff’s name, trademark, and image falsely representing that Plaintiff was affiliated and involved with the launch of Defendants’ products and services. See:



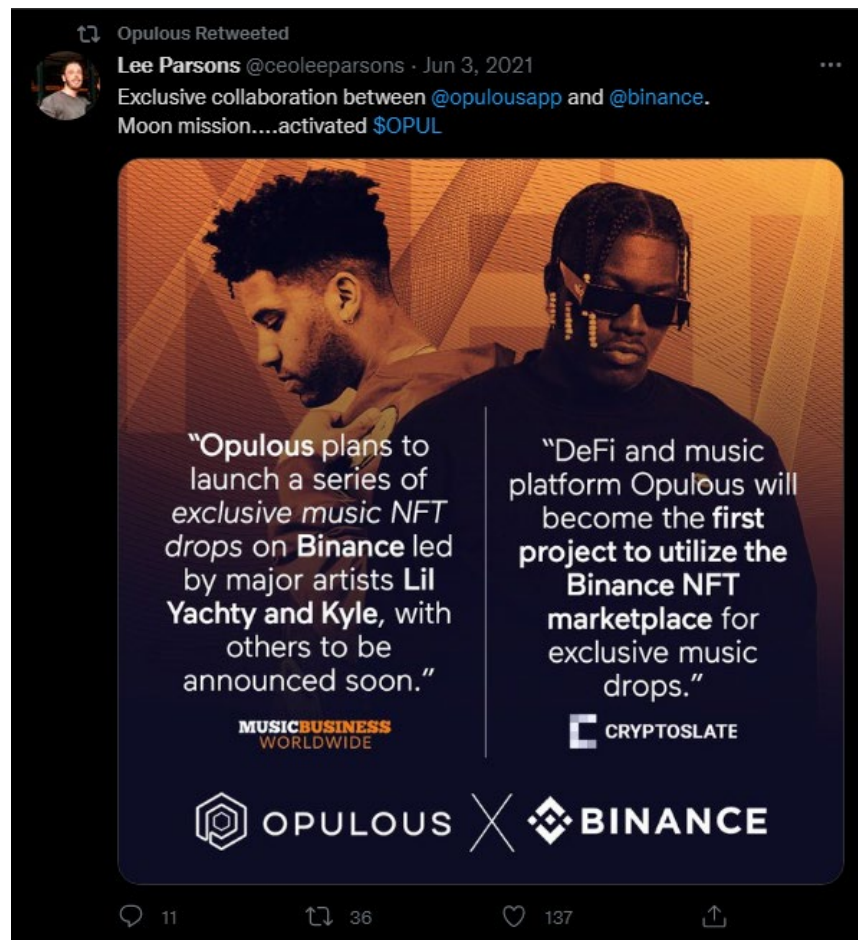
- On June 2, Defendant, DITTO MUSIC, through its subsidiary Ditto Music Africa, also again disseminated the Music Business Worldwide article attached here as “Exhibit C”, again published Plaintiff’s name, trademark, and image falsely representing that Plaintiff was affiliated and involved with the launch of Defendants’ products and services. See:



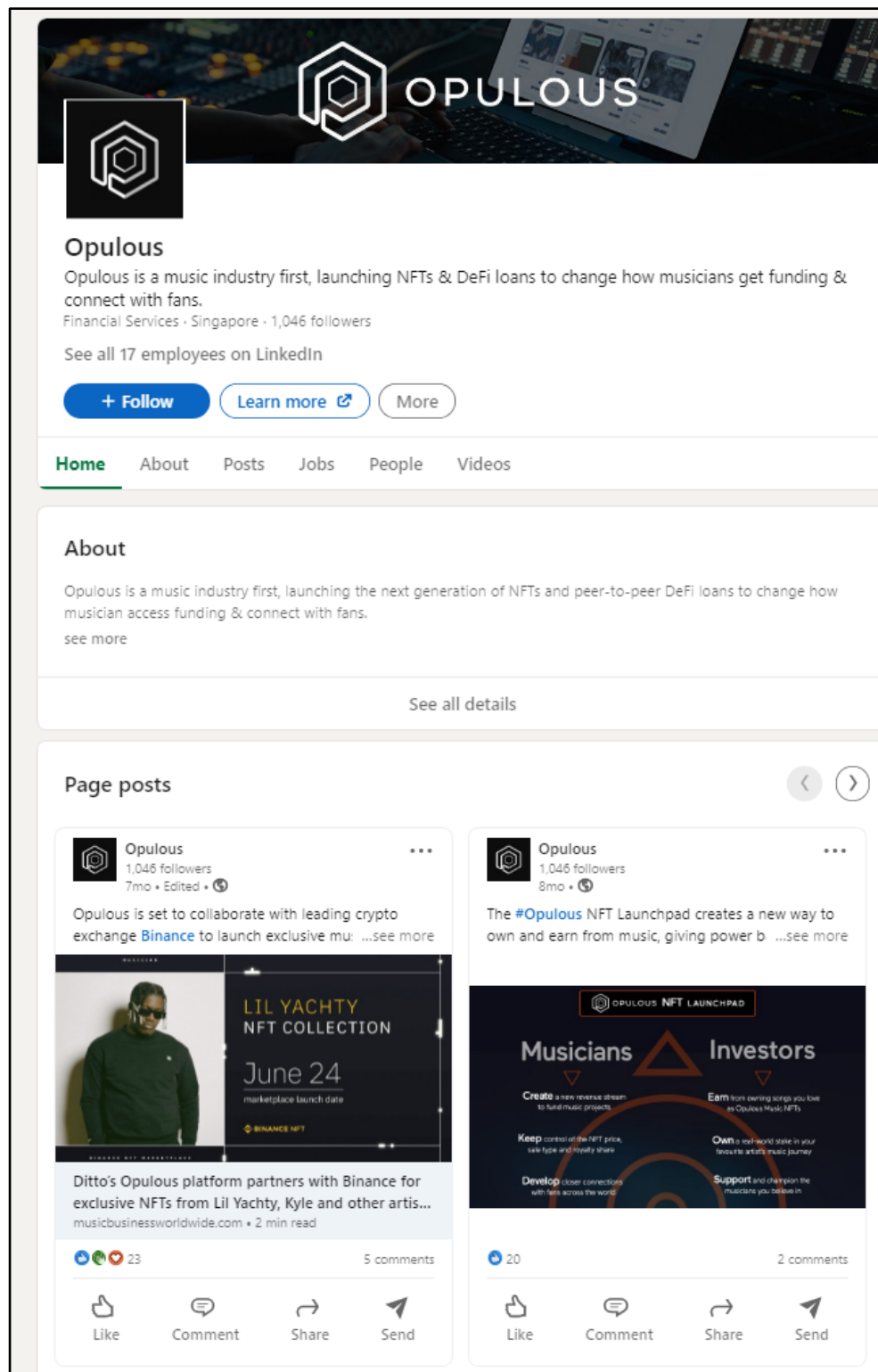
- On June 3, 2021, Defendants caused another press release article to be released through Binance, Defendants' partner in the launch of its OPULOUS branded products and services. That press release, attached here as "Exhibit D", again falsely touted Plaintiff's involvement with the launch of Defendants' products and services, and again highlighted the importance of Plaintiff's alleged flagship / inaugural involvement to the ultimate success of OPULOUS and Defendants' offerings. See, for example, the following quote:

- "The exclusive NFT drops on Binance NFT, led by Lil Yachty..., will give fans a taste of what to expect when Opulous rolls out its launchpad for music NFTs".

- On June 3, 2021, Defendant, LEE JAMES PARSONS, again published through his twitter account Plaintiff's image in promotion of OPULOUS's products and services. See:



- As of the current date, Plaintiff's name and image and the announcement of his alleged involvement with Defendants' products and services are still prominently displayed on the home page of OPULOUS' LinkedIn account, highlighting the prominent use by Defendant of this non-existent partnership / business relationship. See:



1 36. The above specified commercial advertisements and statements (hereinafter, collectively
2 referred to as the “Infringing Ads”) falsely represent and imply that Plaintiff, LIL
3 YACHTY, sponsors, endorses, or is associated with Defendants’ commercial enterprises
4 and Defendants’ collective launching of the OPULOUS platform and NFT products.

5 37. At no time did Defendants have authorization or consent to utilize Plaintiff’s name,
6 trademark, or image in connection with the Infringing Ads, or otherwise.

7 38. In fact, at all times, Defendants acted with actual malice in that Defendants knew that they
8 did not have authorization to utilize Plaintiff’s name, trademark or image in connection
9 with the Infringing Ads, yet did so anyways because same was beneficial to Defendants’
10 commercial enterprises in general and their launching of the OPULOUS platform
11 specifically, in blatant and conscious disregard for Plaintiff’s exclusive legal rights to
12 control the use and exploitation of his name, trademark, and image.

13 39. The Infringing Ads are likely to cause confusion, and have caused actual confusion, in the
14 minds of the consuming public as to an association of Plaintiff with Defendants,
15 OPULOUS, DITTO MUSIC, and LEE JAMES PARSONS.

16 40. Defendants have undoubtedly profited for their unlawful misappropriation and use of
17 Plaintiff’s name, trademark, and image. For example, following their above detailed media
18 blitz falsely touting Plaintiff’s involvement with its offering of products and services,
19 Defendants began raising investment funds for the OPULOUS platform, and utilized their
20 alleged relationship with Plaintiff as a keystone indicator of the success and viability of the
21 OPULOUS platform. The circumstances of Defendants’ malicious and wrongful
22 profiteering was in fact chronicled directly by Defendant, LEE JAMES PARSONS, in an
23 another interview he provided to the media. Specifically, on June 16, 2021, Music Business
24 Worldwide published another article featuring statements and quotes from LEE JAMES
25 PARSONS, including his implicit acknowledgements that Defendants had raised \$6.5
26 million in funding due, in large part, to the alleged involvement of Plaintiff, LIL YACHTY
27 with OPULOUS’ platform and inaugural offerings. That article is attached her as “Exhibit
28 E”, with pertinent quotes as follows:

- 1 • “Parsons says that Opulous plans to launch a series of these exclusive music NFT drops
- 2 with ‘**major artists**’ – **led by Lil Yachty...**” (emphasis added)
- 3 • “ ‘Obviously, we want the biggest artists out there to start selling NFTs through the
- 4 Opulous platform’ says Opulous Founder, Lee Parsons.”
- 5 • “Now, having completed a successful multi-million dollar financing round to fund the
- 6 next stage of its growth, Opulous is welcoming a wider range of artists onto its
- 7 platform...”
- 8

9 41. Defendants have never remitted any funds or earnings to Plaintiff despite generating
10 millions of dollars from the use of his name, trademark, and image.

11 **FIRST CLAIM FOR RELIEF**

12 **(Federal Trademark Infringement (15 U.S.C. §§ 1114) against OPULOUS)**

13 42. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
14 set forth herein.

15 43. Plaintiff has continuously used the federally registered LIL YACHTY mark in connection
16 with his vast and varied commercial endeavors.

17 44. Defendant, OPULOUS’ use and/or publication of the LIL YACHTY trademark in the
18 Infringing Ads was made in connection with the sale and advertising of Defendant’s
19 products and services, and was so used without Plaintiff’s consent.

20 45. Defendant, OPULOUS’ unauthorized use of the LIL YACHTY trademark in the Infringing
21 Ads was so done by Defendant with the actual knowledge that the use was likely to cause
22 confusion or mistake as to Plaintiff’s affiliation, involvement , connection and association
23 with Defendant, and in fact such confusion has occurred.

24 46. At all times, Defendant, OPULOUS, was aware of Plaintiff’s rights in and to the LIL
25 YACHTY mark, yet still utilized same without authorization in violation of federal law,
26 codified at 15 U.S.C. § 1114.

27 47. As a direct and proximate result of Defendant’s acts alleged herein, Plaintiff has suffered
28 and will continue to suffer damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

(Federal Trademark Infringement (15 U.S.C. §§ 1114) against DITTO MUSIC)

48. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully set forth herein.

49. Plaintiff has continuously used the federally registered LIL YACHTY mark in connection with his vast and varied commercial endeavors.

50. Defendant, DITTO MUSIC's use and/or publication of the LIL YACHTY trademark in the Infringing Ads was made in connection with the sale and advertising of Defendant's products and services, and was so used without Plaintiff's consent.

51. Defendant, DITTO MUSIC's unauthorized use of the LIL YACHTY trademark in the Infringing Ads was so done by Defendant with the actual knowledge that the use was likely to cause confusion or mistake as to Plaintiff's affiliation, involvement, connection and association with Defendant, and in fact such confusion has occurred.

52. At all times, Defendant, DITTO MUSIC, was aware of Plaintiff's rights in and to the LIL YACHTY mark, yet still utilized same without authorization in violation of federal law, codified at 15 U.S.C. § 1114.

53. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(Federal Trademark Infringement (15 U.S.C. §§ 1114) against LEE JAMES PARSONS)

54. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully set forth herein.

55. Plaintiff has continuously used the federally registered LIL YACHTY mark in connection with his vast and varied commercial endeavors.

56. Defendant, LEE JAMES PARSONS' use and/or publication of the LIL YACHTY trademark in the Infringing Ads was made in connection with the sale and advertising of Defendant's products and services, and was so used without Plaintiff's consent.

1 57. Defendant, LEE JAMES PARSONS' unauthorized use of the LIL YACHTY trademark in
2 the Infringing Ads was so done by Defendant with the actual knowledge that the use was
3 likely to cause confusion or mistake as to Plaintiff's affiliation, involvement, connection
4 and association with Defendant, and in fact such confusion has occurred.

5 58. At all times, Defendant, LEE JAMES PARSONS, was aware of Plaintiff's rights in and to
6 the LIL YACHTY mark, yet still utilized same without authorization in violation of federal
7 law, codified at 15 U.S.C. § 1114.

8 59. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
9 and will continue to suffer damages in an amount to be proven at trial.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Federal Unfair Competition and False Representation of Affiliation (15 U.S.C. § 1125)**
12 **against OPULOUS)**

13 60. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
14 set forth herein.

15 61. In the Infringing Ads published by Defendant, OPULOUS, Defendant knowingly and
16 intentionally falsely represented that Plaintiff, LIL YACHTY, was affiliated, connected, or
17 associated with Defendant and its commercial enterprises and products offerings, including
18 the OPULOUS platform.

19 62. Defendant, OPULOUS, has and continues to to falsely designate its goods and services as
20 being derived from and/or affiliated with Plaintiff, LIL YACHTY.

21 63. Defendant, OPULOUS' unauthorized use of Plaintiff's name, trademark, and image in the
22 Infringing Ads and otherwise is likely to cause, and has in fact caused, relevant consumers
23 to mistakenly believe that Defendant has an affiliation with Plaintiff, that Defendant's
24 commercial activities and product offerings are sponsored or approved by Plaintiff, or that
25 Defendant is otherwise associated with or has obtained permission from Plaintiff to utilize
26 his name, trademark and image in connection with the advertisement and promotion of
27 Defendant's commercial activities and product offerings.
28

1 64. By engaging in the unauthorized activities described above, Defendant has made, and
2 continues to make, false, deceptive, and misleading statements constituting false
3 representations and false advertising made in connection with the sale of goods or services
4 distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15
5 U.S.C. § 1125 (a). Furthermore, in light of Defendant's actual knowledge that its statements
6 were false, Defendant's activities were, and remain, willful and intentional.

7 65. Defendant's willful and intentional acts of unfair competition and false advertisement have
8 caused and continue to cause great and irreparable injury and damage to Plaintiff's business
9 and goodwill.

10 66. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
11 and will continue to suffer damages in an amount to be proven at trial.

12
13 **FIFTH CLAIM FOR RELIEF**

14 **(Federal Unfair Competition and False Representation of Affiliation (15 U.S.C. § 1125)
15 against DITTO MUSIC)**

16 67. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
17 set forth herein.

18 68. In the Infringing Ads published by Defendant, DITTO MUSIC, Defendant knowingly and
19 intentionally falsely represented that Plaintiff, LIL YACHTY, was affiliated, connected, or
20 associated with Defendant and its commercial enterprises and products offerings, including
21 the OPULOUS platform founded by DITTO MUSIC.

22 69. Defendant, DITTO MUSIC, has and continues to falsely designate its goods and services
23 as being derived from and/or affiliated with Plaintiff, LIL YACHTY.

24 70. Defendant, DITTO MUSIC's unauthorized use of Plaintiff's name, trademark, and image
25 in the Infringing Ads and otherwise is likely to cause, and has in fact caused, relevant
26 consumers to mistakenly believe that Defendant has an affiliation with Plaintiff, that
27 Defendant's commercial activities and product offerings are sponsored or approved by
28 Plaintiff, or that Defendant is otherwise associated with or has obtained permission from

1 Plaintiff to utilize his name, trademark and image in connection with the advertisement and
2 promotion of Defendant's commercial activities and product offerings.

3 71. By engaging in the unauthorized activities described above, Defendant has made, and
4 continues to make, false, deceptive, and misleading statements constituting false
5 representations and false advertising made in connection with the sale of goods or services
6 distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15
7 U.S.C. § 1125 (a). Furthermore, in light of Defendant's actual knowledge that its statements
8 were false, Defendant's activities were, and remain, willful and intentional.

9 72. Defendant's willful and intentional acts of unfair competition and false advertisement have
10 caused and continue to cause great and irreparable injury and damage to Plaintiff's business
11 and goodwill.

12 73. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
13 and will continue to suffer damages in an amount to be proven at trial.

14
15 **SIXTH CLAIM FOR RELIEF**

16 **(Federal Unfair Competition and False Representation of Affiliation (15 U.S.C. § 1125)**
17 **against LEE JAMES PARSONS)**

18 74. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
19 set forth herein.

20 75. In the Infringing Ads published by Defendant, LEE JAMES PARSONS, Defendant
21 knowingly and intentionally falsely represented that Plaintiff, LIL YACHTY, was
22 affiliated, connected, or associated with Defendant and its commercial enterprises and
23 products offerings, including the OPULOUS platform founded and owned by LEE JAMES
24 PARSONS.

25 76. Defendant, LEE JAMES PARSONS, has and continues to falsely designate its goods and
26 services as being derived from and/or affiliated with Plaintiff, LIL YACHTY.

27 77. Defendant, LEE JAMES PARSONS' unauthorized use of Plaintiff's name, trademark, and
28 image in the Infringing Ads and otherwise is likely to cause, and has in fact caused, relevant

1 consumers to mistakenly believe that Defendant has an affiliation with Plaintiff, that
2 Defendant's commercial activities and product offerings are sponsored or approved by
3 Plaintiff, or that Defendant is otherwise associated with or has obtained permission from
4 Plaintiff to utilize his name, trademark and image in connection with the advertisement and
5 promotion of Defendant's commercial activities and product offerings.

6 78. By engaging in the unauthorized activities described above, Defendant has made, and
7 continues to make, false, deceptive, and misleading statements constituting false
8 representations and false advertising made in connection with the sale of goods or services
9 distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15
10 U.S.C. § 1125 (a). Furthermore, in light of Defendant's actual knowledge that its statements
11 were false, Defendant's activities were, and remain, willful and intentional.

12 79. Defendant's willful and intentional acts of unfair competition and false advertisement have
13 caused and continue to cause great and irreparable injury and damage to Plaintiff's business
14 and goodwill.

15 80. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
16 and will continue to suffer damages in an amount to be proven at trial.

17
18 **SEVENTH CLAIM FOR RELIEF**

19 **(Violation of the California Common Law Right of Privacy against OPULOUS)**

20 81. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
21 set forth herein.

22 82. In doing the acts alleged herein, Defendant, OPULOUS, has used for commercial
23 purposes Plaintiff, LIL YACHTY's, name, trademark and image, without Plaintiff's
24 consent.

25 83. The commercial use and misappropriation of Plaintiff's name, trademark, and image, is a
26 violation of the California common law right of privacy, which includes the right of
27 publicity.
28

1 84. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
2 and will continue to suffer damages in an amount to be proven at trial.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(Violation of the California Common Law Right of Privacy against DITTO MUSIC)**

5
6 85. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
7 set forth herein.

8 86. In doing the acts alleged herein, Defendant, DITTO MUSIC, has used for commercial
9 purposes Plaintiff, LIL YACHTY's, name, trademark and image, without Plaintiff's
10 consent.

11 87. The commercial use and misappropriation of Plaintiff's name, trademark, and image, is a
12 violation of the California common law right of privacy, which includes the right of
13 publicity.

14
15 88. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
16 and will continue to suffer damages in an amount to be proven at trial.

17 **NINTH CLAIM FOR RELIEF**

18 **(Violation of the California Common Law Right of Privacy against) against LEE
19 JAMES PARSONS)**

20 89. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
21 set forth herein.

22 90. In doing the acts alleged herein, Defendant, LEE JAMES PARSONS, has used for
23 commercial purposes Plaintiff, LIL YACHTY's, name, trademark and image, without
24 Plaintiff's consent.

25 91. The commercial use and misappropriation of Plaintiff's name, trademark, and image, is a
26 violation of the California common law right of privacy, which includes the right of
27 publicity.
28

1 92. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
2 and will continue to suffer damages in an amount to be proven at trial.

3 **TENTH CLAIM FOR RELIEF**

4 **(Violation of the California Statutory Right of Publicity (Civil Code § 3344) against**
5 **OPULOUS)**

6 93. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
7 set forth herein.

8 94. In doing the acts alleged herein, Defendant, OPULOUS, knowingly, willfully, and
9 unlawfully used and misappropriated Plaintiff's name, trademark, and image in the
10 Infringing Ads for Defendant's own commercial purposes.

11 95. Defendant's misappropriation of Plaintiff's name, trademark, and image for its own
12 commercial purposes is a violation of California Civil Code § 3344.

13 96. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered
14 and will continue to suffer damages in an amount to be proven at trial.

15 **ELEVENTH CLAIM FOR RELIEF**

16 **(Violation of the California Statutory Right of Publicity (Civil Code § 3344) against**
17 **DITTO MUSIC)**

18 97. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully
19 set forth herein.

20 98. In doing the acts alleged herein, Defendant, DITTO MUSIC, knowingly, willfully, and
21 unlawfully used and misappropriated Plaintiff's name, trademark, and image in the
22 Infringing Ads for Defendant's own commercial purposes.

23 99. Defendant's misappropriation of Plaintiff's name, trademark, and image for its own
24 commercial purposes is a violation of California Civil Code § 3344.

25 100. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has
26 suffered and will continue to suffer damages in an amount to be proven at trial.
27
28

TWELTH CLAIM FOR RELIEF

(Violation of the California Statutory Right of Publicity (Civil Code § 3344) against LEE JAMES PARSONS)

101. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully set forth herein.

102. In doing the acts alleged herein, Defendant, LEE JAMES PARSONS, knowingly, willfully, and unlawfully used and misappropriated Plaintiff's name, trademark, and image in the Infringing Ads for Defendant's own commercial purposes.

103. Defendant's misappropriation of Plaintiff's name, trademark, and image for its own commercial purposes is a violation of California Civil Code § 3344.

104. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial.

THIRTEENTH CLAIM FOR RELIEF

(California Unfair Competition (Business & Professions Code § 17200) against OPULOUS)

105. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if fully set forth herein.

106. In the Infringing Ads published by Defendant, OPULOUS, Defendant knowingly and intentionally falsely represented that Plaintiff, LIL YACHTY, was affiliated, connected, or associated with Defendant and its commercial enterprises and products offerings, including the OPULOUS platform.

107. Defendant, OPULOUS, has and continues to falsely designate its goods and services as being derived from and/or affiliated with Plaintiff, LIL YACHTY.

108. Defendant, OPULOUS' unauthorized use of Plaintiff's name, trademark, and image in the Infringing Ads and otherwise is likely to cause, and has in fact caused, relevant consumers to mistakenly believe that Defendant has an affiliation with Plaintiff, that Defendant's commercial activities and product offerings are sponsored or approved by Plaintiff, or that Defendant is otherwise associated with or has obtained permission from

1 Plaintiff to utilize his name, trademark and image in connection with the advertisement and
2 promotion of Defendant's commercial activities and product offerings.

3 109. By engaging in the unauthorized activities described above, Defendant has made, and
4 continues to make, false, deceptive, and misleading statements constituting false
5 representations and false advertising made in connection with the sale of goods or services
6 distributed in interstate commerce in violation of Section 17200 of the California Business
7 and Professions Code. Furthermore, in light of Defendant's actual knowledge that its
8 statements were false, Defendant's activities were, and remain, willful and intentional.

9 110. Defendant's willful and intentional acts of unfair competition and false advertisement
10 have caused and continue to cause great and irreparable injury and damage to Plaintiff's
11 business and goodwill.

12 111. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has
13 suffered and will continue to suffer damages in an amount to be proven at trial.
14

15 **FOURTEENTH CLAIM FOR RELIEF**

16 **(California Unfair Competition (Business & Professions Code § 17200) against DITTO
17 MUSIC)**

18 112. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if
19 fully set forth herein.

20 113. In the Infringing Ads published by Defendant, DITTO MUSIC, Defendant knowingly
21 and intentionally falsely represented that Plaintiff, LIL YACHTY, was affiliated,
22 connected, or associated with Defendant and its commercial enterprises and products
23 offerings, including the OPULOUS platform founded by DITTO MUSIC.

24 114. Defendant, DITTO MUSIC, has and continues to falsely designate its goods and
25 services as being derived from and/or affiliated with Plaintiff, LIL YACHTY.

26 115. Defendant, DITTO MUSIC's unauthorized use of Plaintiff's name, trademark, and
27 image in the Infringing Ads and otherwise is likely to cause, and has in fact caused, relevant
28 consumers to mistakenly believe that Defendant has an affiliation with Plaintiff, that

1 Defendant's commercial activities and product offerings are sponsored or approved by
2 Plaintiff, or that Defendant is otherwise associated with or has obtained permission from
3 Plaintiff to utilize his name, trademark and image in connection with the advertisement and
4 promotion of Defendant's commercial activities and product offerings.

5 116. By engaging in the unauthorized activities described above, Defendant has made, and
6 continues to make, false, deceptive, and misleading statements constituting false
7 representations and false advertising made in connection with the sale of goods or services
8 distributed in interstate commerce in violation of Section 17200 of the California Business
9 and Professions Code. Furthermore, in light of Defendant's actual knowledge that its
10 statements were false, Defendant's activities were, and remain, willful and intentional.

11 117. Defendant's willful and intentional acts of unfair competition and false advertisement
12 have caused and continue to cause great and irreparable injury and damage to Plaintiff's
13 business and goodwill.

14 118. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has
15 suffered and will continue to suffer damages in an amount to be proven at trial.

16
17 **FIFTEENTH CLAIM FOR RELIEF**

18 **(California Unfair Competition (Business & Professions Code § 17200) against OPULOUS)**

19 119. Plaintiff incorporates by reference the allegations of paragraphs 1 through 41 as if
20 fully set forth herein.

21 120. In the Infringing Ads published by Defendant, LEE JAMES PARSONS, Defendant
22 knowingly and intentionally falsely represented that Plaintiff, LIL YACHTY, was
23 affiliated, connected, or associated with Defendant and its commercial enterprises and
24 products offerings, including the OPULOUS platform founded and owned by LEE JAMES
25 PARSONS.

26 121. Defendant, LEE JAMES PARSONS, has and continues to falsely designate its goods
27 and services as being derived from and/or affiliated with Plaintiff, LIL YACHTY.
28

1 122. Defendant, LEE JAMES PARSONS' unauthorized use of Plaintiff's name,
2 trademark, and image in the Infringing Ads and otherwise is likely to cause, and has in fact
3 caused, relevant consumers to mistakenly believe that Defendant has an affiliation with
4 Plaintiff, that Defendant's commercial activities and product offerings are sponsored or
5 approved by Plaintiff, or that Defendant is otherwise associated with or has obtained
6 permission from Plaintiff to utilize his name, trademark and image in connection with the
7 advertisement and promotion of Defendant's commercial activities and product offerings.

8 123. By engaging in the unauthorized activities described above, Defendant has made, and
9 continues to make, false, deceptive, and misleading statements constituting false
10 representations and false advertising made in connection with the sale of goods or services
11 distributed in interstate commerce in violation of Section 17200 of the California Business
12 and Professions Code. Furthermore, in light of Defendant's actual knowledge that its
13 statements were false, Defendant's activities were, and remain, willful and intentional.

14 124. Defendant's willful and intentional acts of unfair competition and false advertisement
15 have caused and continue to cause great and irreparable injury and damage to Plaintiff's
16 business and goodwill.

17 125. As a direct and proximate result of Defendant's acts alleged herein, Plaintiff has
18 suffered and will continue to suffer damages in an amount to be proven at trial.
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs request entry of judgement against Defendants, and each of them,
22 as follows:

- 23 1. Compensatory damages, consequential damages, lost profits, and
24 disgorgement of Defendants' profits and funds raised attributable to
25 Defendants' wrongful conduct as detailed herein;
26 2. An award of attorney's fees and costs as allowable by law;
27 3. Injunctive relief as allowable by law;
28 4. Punitive damages as allowable law; and

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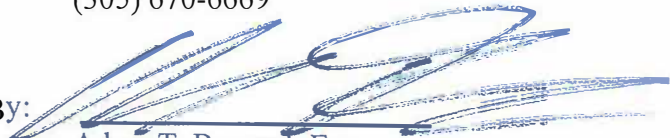
5. Any other relief that is just and proper under the law.

Dated this 26th day of January, 2021.

Respectfully submitted,

THE ROUSSO, BOUMEL LAW FIRM
9350 South Dixie Highway
Suite 1520
Miami, Florida 33156
(305) 670-6669

By:



Adam T. Boumel, Esq.
California Bar No.: 302788
adam@roussolawfirm.com
SERVICE EMAIL:
pleadings@roussolawfirm.com

EXHIBIT "A"

United States of America

United States Patent and Trademark Office

Lil Yachty

Reg. No. 5,226,262

Miles McCollum (UNITED STATES INDIVIDUAL)
1116 Willow Crest Way
Austell, GA 30168

Registered Jun. 20, 2017

Int. Cl.: 41

CLASS 41: Entertainment services in the nature of live musical performances by a performer or group

Service Mark

FIRST USE 5-1-2015; IN COMMERCE 1-15-2016

Principal Register

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

The name(s), portrait(s), and/or signature(s) shown in the mark identifies "LIL YACHTY", whose consent(s) to register is made of record.

SER. NO. 87-029,468, FILED 05-09-2016
JEFFREY S DEFORD, EXAMINING ATTORNEY



Joseph Matal

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

EXHIBIT "B"

Get started

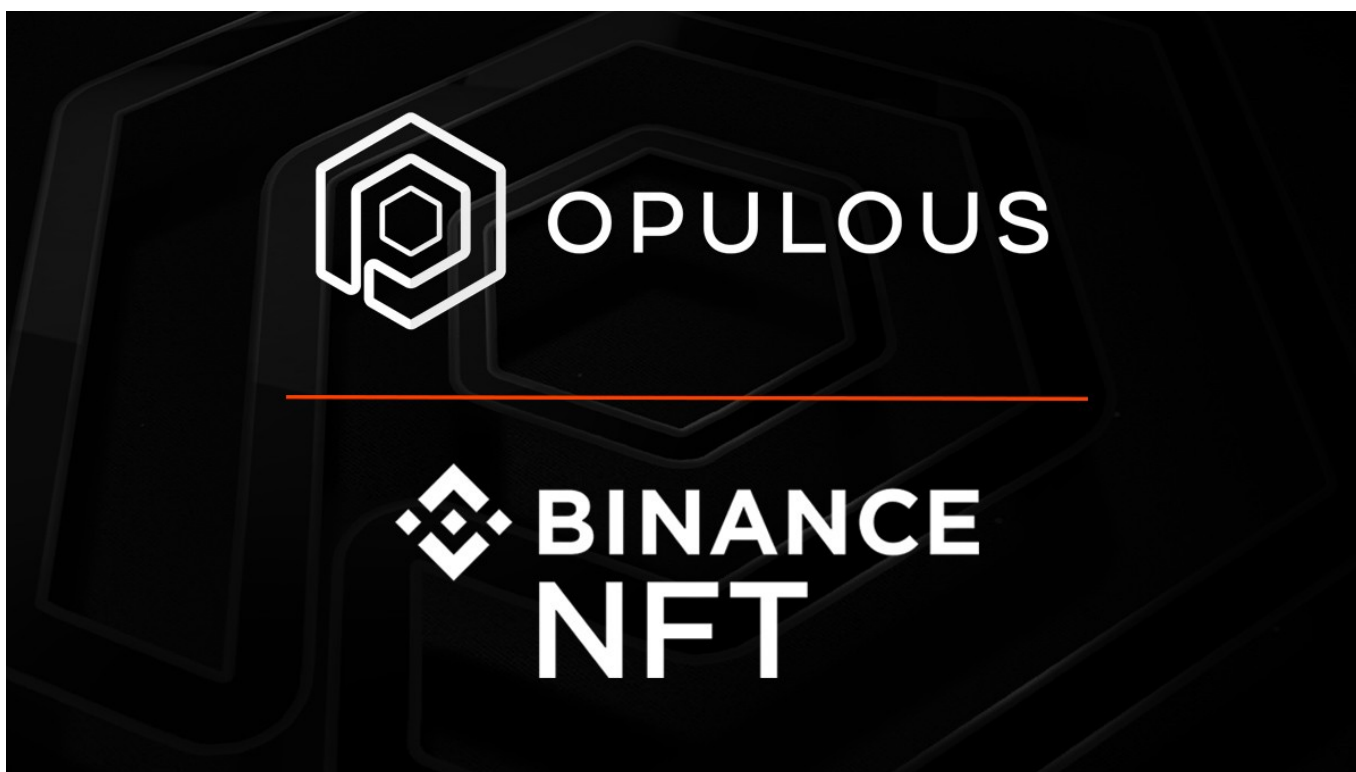
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About

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Opulous collaborates with Binance to launch exclusive music NFT drops

 Opulous Jun 1, 2021 · 2 min read

We're delighted to announce our new collaboration with the world's leading blockchain ecosystem and crypto exchange Binance.

Our collab with Binance is great news for the whole Opulous community. We're set to create and launch some exclusive music NFT drops with major artists via Binance's brand new NFT marketplace.

There'll be plenty of opportunities to get involved with our sales, so if you're part of our awesome community, you'll be the first to hear about them. Plus, we're really looking forward to engaging Binance's worldwide following and sharing our vision for Opulous with millions of new music and blockchain enthusiasts.

We'll also be offering the chance for upcoming artists we work with to list their own sales on the [Binance NFT marketplace](#) down the line, helping them make more money up-front, raise the cash they need to invest in their own careers and form even closer relationships with fans.

Right now though, we'll be kicking things off with a series of unmissable NFT drops led by world-famous artists including Lil Yachty and Kyle.

But that's just the start. We've got more big-names lined up so keep an eye out for further announcements coming soon.

Don't forget that this is Opulous, so these are no ordinary NFTs. We've designed these drops to connect artists with their fans on a whole new level. In fact, our Binance music NFT sales will also include the opportunity for buyers to take part in **once-in-a-lifetime fan experiences** and artist engagements.

Unlike many of our future NFTs, these sales will take place outside of the Opulous platform on Binance's upcoming NFT marketplace. It's an exciting chance for you to grab one of our first ever Opulous NFTs.

We'll be releasing more info about our Binance collaboration and future NFT drops very soon. So as always, make sure to register at opulous.org, join our [Telegram group](#) and [follow us on Twitter](#) for all the latest updates as they happen.

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Get the Medium app



EXHIBIT "C"



(<https://www.musicbusinessworldwide.com/>)

DITTO'S OPULOUS PLATFORM PARTNERS WITH BINANCE FOR EXCLUSIVE NFTS FROM LIL YACHTY, KYLE AND OTHER ARTISTS

393
SHARES

BY MURRAY STASSEN

([HTTPS://WWW.MUSICBUSINESSWORLDWIDE.COM/REGIONS/NORTH-AMERICA/USA/](https://www.musicbusinessworldwide.com/regions/north-america/usa/)) JUNE 1, 2021 ([HTTPS://WWW.MUSICBUSINESSWORLDWIDE.COM/AUTHOR/MSTASSEN/](https://www.musicbusinessworldwide.com/author/murray-stassen/))



Music NFT and DeFi platform Opulous is planning to create and release NFT collectibles on Binance NFT, a new non-fungible token marketplace from blockchain ecosystem and cryptocurrency infrastructure provider, Binance.

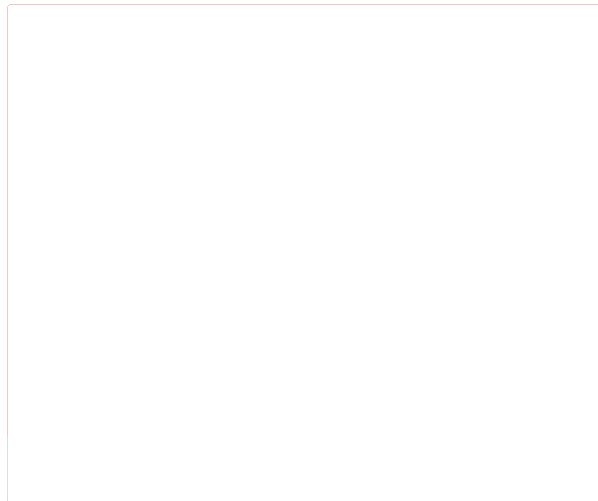
Established by Ditto Music founder (<https://www.musicbusinessworldwide.com/ditto-launches-opulous-platform-to-help-artists-access-funding-without-the-need-for-traditional-banks/>) Lee Parsons earlier this year, Opulous is a blockchain-powered financial support initiative for artists, which is described as the first-ever decentralised finance (DeFi) offering backed by music as an asset class.

ADVERTISEMENT

The Opulous platform also facilitates the launch of Opulous Music NFTs, which the company says is “a new form of NFT” that offers buyers rewards and a share of a song’s future earnings in exchange for social media support, as well as peer-to-peer DeFi loans.

The NFTs sales will also include the opportunity for buyers to participate in fan experiences and engagements.

ADVERTISEMENT



Opulous plans to launch a series of exclusive music NFT drops on Binance with “major artists”, led by Lil Yachty and Kyle, with others to be announced soon. Binance NFT launches on June 24.

MBW understands that Opulous is getting ready to announce a string of new exclusive music copyright NFT sales in tandem with a large industry partner.

This follows Opulous’s pioneering experiment with NFT copyright sales on the blockchain earlier this year, when it – then known as Bluebox – sold 1% stakes in recordings (<https://www.musicbusinessworldwide.com/having-sold-music-rights-to-125-people-via-nfts->

this-music-blockchain-platform-is-evolving-again-2/) by Big Zuu and Taylor Bennett to over 120 people via cryptocurrency transactions.

“WE’RE DELIGHTED TO WORK WITH BINANCE NFT TO LAUNCH THESE EXCLUSIVE NFT DROPS WITH SOME OF THE MOST EXCITING ARTISTS FROM ALL OVER THE WORLD.”

LEE PARSONS, OPULOUS

Opulous CEO Lee Parsons, said: “We’re delighted to work with Binance NFT to launch these exclusive NFT drops with some of the most exciting artists from all over the world.

“I’ve been passionate about the applications of crypto and blockchain technology within the music industry for many years, and believe the launch of NFT drops like these will help to strengthen the connection between artists and their fans well into the future.”

EXHIBIT "D"

News

Opulous to launch music NFTs with Lil Yachty and Kyle

June 2, 2021

Tags: [Ditto](#) [Lil Yachty NFTs](#) [Opulous](#)



Earlier this year, distributor Ditto [launched its Opulous 'decentralised finance scheme'](#) as a blockchain-powered way to offer loans to artists, guaranteed against their streaming revenues. However, the spin-off company is also exploring non-fungible tokens (NFTs) including a new [partnership with crypto exchange Binance](#). It will see the company launching a series of artist-focused NFT drops, starting with Lil Yachty (who has already [launched his own cryptocurrency](#)) and Kyle.

Ditto says that more artist drops will follow, and it's part of Binance's own expansion into NFTs that includes footballer Guti and painter Frank Holliday. The Lil Yachty and Kyle NFT collections will go live on 24 June on Binance's marketplace.

Opulous is also working on the idea of NFTs that will offer buyers "a share of a song's future earnings in exchange for social media support" as well as other rewards.

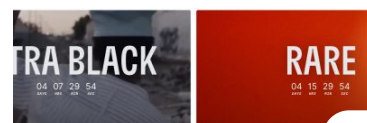
Stuart Dredge

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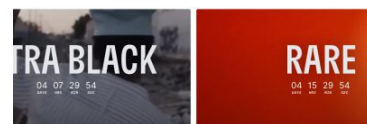
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Nas is the next artist selling a share of his royalties as NFTs

EXHIBIT "E"



(<https://www.musicbusinessworldwide.com/>)

OPULOUS JUST RAISED \$6.5 MILLION. NOW IT WANTS MORE ARTISTS TO SELL NFTS THROUGH ITS PLATFORM.

639

SHARES

BY TIM INGHAM

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JUNE 16, 2021



Lee Parsons

The Opulous platform, devised and launched by the founders of DIY music service [Ditto](https://www.musicbusinessworldwide.com/companies/ditto-music/) (<https://www.musicbusinessworldwide.com/companies/ditto-music/>), has caused ripples through the music business since it arrived earlier this year.

(<https://www.musicbusinessworldwide.com/ditto-launches-opulous-platform-to-help-artists-access-funding-without-the-need-for-traditional-banks/>)

A blockchain-powered financial platform for artists, in April Opulous – then operating as Bluebox – hosted the first ever split music copyright sale by artists via NFTs.

British rapper Big Zuu and US artist Taylor Bennett each successfully sold a collection of 1% stakes in unreleased recordings via the blockchain.

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All 125 of these items (<https://www.musicbusinessworldwide.com/having-sold-music-rights-to-125-people-via-nfts-this-music-blockchain-platform-is-evolving-again-2/>) sold out in under 30 seconds with over 10,000 people trying to get into the sale. (Buyers of these 1% stakes acquired a worldwide exclusive fractional license to these sound recordings, with ownership in perpetuity).

Now, having completed a successful multi-million-dollar financing round to fund the next stage of its growth, Opulous is welcoming a wider range of artists onto its platform to host similar split copyright NFT sales.

“WHEN IT COMES TO SPLIT-COPYRIGHT NFTS, WE SEE A REAL SWEET SPOT HERE FOR ARTISTS WHO HAVE, SAY, 3 MILLION-PLUS FOLLOWERS ON SPOTIFY ([HTTPS://WWW.MUSICBUSINESSWORLDWIDE.COM/COMPANIES/SPOTIFY/](https://www.musicbusinessworldwide.com/companies/spotify/)).”

LEE PARSONS, OPULOUS

“Obviously, we want the biggest artists out there to start selling NFTs through the Opulous platform,” says Opulous founder, Lee Parsons. “But when it comes to the split-copyright NFTs, we see a real sweet spot here for artists who have, say, 3 million-plus followers on Spotify – artists with the kind of solid fan-base that will actively want to help promote their music to others, and will really value owning a stake, and getting a return, from that music’s success.”

What Parsons is describing is, in essence, a future of dedicated global fanbases operating with a shared determination to fuel their favorite artist’s success – *a la* BTS’s online ARMY.

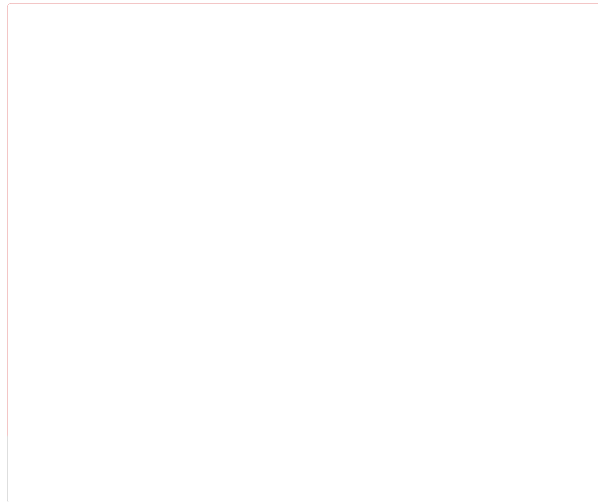
(<https://www.musicbusinessworldwide.com/bts-set-new-spotify-streaming-record-with-20-9m-day-one-plays-but-nearly-10m-of-them-are-discounted-on-platforms-chart/>)

This determination, though, will come not just from fans loving the act in question, but also because they're directly invested in their prosperity.

Thanks to a recent partnership with Binance (<https://www.musicbusinessworldwide.com/dittos-opulous-platform-partners-with-binance-for-exclusive-nfts-from-lil-yachty-kyle-and-other-artists/>), artists can also now sell *non-copyright* NFTs via Opulous, including VIP fan experiences – giving super-fans a chance to spend big on scarce items from their favourite artists.

Major artists such as Lil Yachty and Kyle have already signed up to sell non-copyright NFTs via the Opulous/Binance tie-up.

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Meanwhile, Opulous this month closed a \$6.5 million funding round from a list of backers soon to be announced.

Parsons is keeping tight-lipped on the names of Opulous's new backers for now, but does confirm that "some of my favorite artists" are investors in the platform.

(A quick glance at the Opulous Twitter account (<https://twitter.com/opulousapp>) reveals that people like famed entrepreneur Gary Vaynerchuk – as well as a fair few notable music industry types – are following the company closely.)

A million dollars of the \$6.5 million was raised via a crowd-raise. Parsons says this process proved so popular it was executed via a lottery system – with users having to prepay their money with the hope of 'winning' an allocation to invest in Opulous.

“IN THIS WORLD WHERE ARTISTS NEED AND WANT TO [FINANCE] THEMSELVES VIA THEIR COPYRIGHTS, THIS KIND OF [CRYPTO-BASED] FAN-FUNDING IS THE INEVITABLE MODEL OF THE FUTURE. AND AS IT BUILDS, IT’S GOING TO BECOME A BIG THREAT TO THE MAJOR LABELS.”

LEE PARSONS, OPULOUS

“We could have raised literally ten times more than that with the level of demand we saw,” says Parsons, “but right now this is about sensibly taking Opulous to the next level, and bringing on the next wave of artists selling copyright NFTs for the very first time.”

Added Parsons: “We hear a lot from independent artists, ‘But I want to keep my copyrights, not sell them.’ And of course that’s one option in a career. But another option is to raise the funds you need or want direct from your fans, and have those fans become evangelists for you and your music in the process.

“In this world where artists need and want to [finance] themselves via their copyrights, this kind of [crypto-based] fan-funding is the inevitable model of the future. And as it builds, it’s going to become a big threat to the major labels.

“Our software can even track who amongst your ‘army’ is the most engaged and increase their rewards.”

Earlier this month, Opulous inked its partnership with Binance (<https://www.binance.com/en>) in order to allow artists to sell additional, different types of NFTs – not related to copyrights – via the Binance NFT platform.

Parsons says that Opulous plans to launch a series of these exclusive music NFT drops with “major artists” – led by Lil Yachty and Kyle – on Binance NFT, with others to be announced soon.

“NFTs are very lucrative,” comments Parsons. “With our Binance collaboration, artists will be able to sell fan experiences like a day in the studio with themselves, as well as Facetime calls, a day doing extreme sports together – anything.

“WE SEE A FUTURE WHERE ARTISTS ARE DOING REGULAR NFT DROPS ON BINANCE OUTSIDE OF THEIR COPYRIGHTED MUSIC, SELLING EVERYTHING FROM FUTURE FAN EXPERIENCES TO ARTWORKS.”

LEE PARSONS, OPULOUS

“And these items will be trade-able, potentially making even more money for the artists via secondary trading.”

Adds Parsons: “We see a future where artists are doing regular NFT drops on Binance outside of their copyrighted music, selling everything from future fan experiences to artworks.

“There is a lot of money to be made.”

Opulous is currently hiring for a Los Angeles-based Head of Artist Services (<https://www.musicbusinessworldwide.com/jobs/opulous-head-of-artist-services-us/>), a role which requires at least 5 years of music industry experience as a high level account manager, artist liaison or other relevant role.

EXHIBIT

D

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NIKE, INC.,

Plaintiff,

v.

STOCKX LLC,

Defendant.

Case No. 1:22-cv-000983-VEC

FIRST AMENDED COMPLAINT

JURY TRIAL REQUESTED

Plaintiff Nike, Inc. (“Nike” or “Plaintiff”) for its First Amended Complaint (“FAC”) against Defendant StockX LLC (“StockX” or “Defendant”) for trademark infringement, trademark dilution, counterfeiting, false advertising, and related causes of action alleges as follows:

PRELIMINARY STATEMENT

1. On February 3, 2022, Nike filed its original Complaint (Plaintiff Nike, Inc.’s Complaint, February 3, 2022 [Dkt. No. 1] (“Complaint”)) in this action because of Defendant StockX’s unauthorized and infringing use of Nike’s famous marks in connection with StockX’s entry into the Non-Fungible Token market. Non-Fungible Tokens or “NFTs” have quickly become pervasive in their use by brand owners seeking to enter the nascent marketplace of virtual or digital products connected to a token on the blockchain. NFTs are commonly understood to be blockchain-based virtual products that can be collected, sold, and traded in the marketplace. They are an exciting way for brands to interact with their consumers in and out of the “metaverse,” and diverse commercial applications of NFTs have emerged throughout the past two years. Far more than a fleeting trend, NFTs are part of the future of commerce.

2. Unfortunately, novel product offerings, burgeoning technologies, and gold rush markets tend to create opportunities for third parties to capitalize on the goodwill of reputable brands and create confusion in the marketplace. NFTs are, not surprisingly, no exception to the

rule, and this new frontier has swiftly become a virtual playground for infringers to usurp the goodwill of some of the most famous trademarks in the world and use those trademarks without authorization to market their virtual products and generate ill-gotten profits.

3. Enter Defendant StockX, the operator of an online secondary market platform for the resale of various brands of sneakers, apparel, luxury handbags, electronics, and other collectible goods that purports to provide authentication services to its customers. According to StockX's Answer to Nike's Complaint, StockX is different than other online marketplaces because it "uses a proprietary, multi-step authentication process for every product sold on its platform. This process ensures that items traded on StockX conform to the product descriptions and condition standards advertised by StockX, and that the products offered for sale are what they claim to be, and are not counterfeit, defective, or used—meaning StockX's customers can trust that transactions made through StockX are safe." (Defendant StockX LLC's Answer, March 31, 2022 [Dkt. No. 21] ("Answer") at 2.)

4. StockX publicly touts the fact that Nike products drive far more sales on its e-commerce platform than any other brand, and StockX advertisements and social media accounts are teeming with images of Nike goods. StockX is even marketing and selling Nike goods on its secondary market platform *before* Nike releases those goods to the marketplace in the first instance. See <https://stockx.com/new-releases/sneakers>. StockX built its secondary market business by exploiting the immense goodwill and reputation that Nike has amassed through many years as the world's leading designer, developer, marketer, and seller of athletic footwear and apparel. Now, recognizing firsthand the immense value of Nike's brands, StockX chose to enter the lucrative 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.

5. Specifically, without Nike’s authorization or approval, StockX is “minting” NFTs that prominently use Nike’s trademarks, marketing those NFTs using Nike’s goodwill, and selling those NFTs at heavily inflated prices to unsuspecting consumers who believe or are likely to believe that those “investible digital assets” (as StockX calls them) are, in fact, authorized by Nike when they are not. Unlike its e-commerce business which caters to buyers and sellers of goods originating from various companies, StockX launched its NFT venture almost exclusively with Nike-branded NFTs, yet none of those NFTs originates from Nike. Examples of StockX’s infringing NFTs appear below:



6. StockX claims that its “100% Authentic” Nike-branded “Vault NFTs” do no more than track ownership of a specific physical Nike product that StockX has purportedly authenticated using its “proprietary, multi-step authentication process” and is safely securing in its “vault.” StockX’s post hoc rationalization that it is simply selling “claim tickets” with no value apart from the physical shoe is belied by its own statements, as well as the fact that those purported “claim tickets” have sold for thousands of dollars above the price of the physical shoe that said ticket supposedly claims. Those statements—some of which StockX has modified or removed from its platform since this action was filed—reflect the fact that StockX’s Nike-branded Vault NFTs, whose purchasers can trade or collect and admire in their “NFT Portfolios,” are, in fact, new virtual

products that StockX has bundled with additional StockX services (e.g., “Vault Services”) and unspecified benefits (e.g., “exclusive access to StockX releases, promotions, events”). Nike does not sell StockX’s services or exclusive access to such benefits. Yet StockX’s new virtual products have been created, marketed, offered for sale, and sold by StockX using Nike’s trademarks without Nike’s consent. And, according to StockX, it is “just getting started.” See <https://stockx.com/about/stockx-launches-vault-nfts/>.

7. Just as troubling have been other StockX statements that appear to negate StockX’s primary claim that a Vault NFT can be readily traded in for the associated physical shoes stored in a StockX facility. For example, while StockX initially claimed that Vault NFT owners may “redeem” the NFT and take possession of the shoes (for an additional fee), it also sold the infringing Nike-branded NFTs while stating that “the redemption process is not currently available” to NFT owners. StockX also, shockingly, sold the infringing Nike-branded NFTs while retaining the right to *unilaterally* redeem a Vault NFT for a so-called “Experiential Component,” and take away the NFT, completely depriving the Vault NFT owner of possession of the shoes that are supposedly connected to the NFT. In the short time since Nike initiated this action, StockX has repeatedly revised its statements to consumers, hoping to erase some of the unsavory conduct that Nike’s Complaint identified. Those changes have done nothing to resolve Nike’s claims. Regardless, upon information and belief, by that point StockX had already offered for sale and sold through its initial inventory of 558 infringing Nike-branded Vault NFTs. StockX continues to earn revenue on secondary trades of those infringing Nike-branded NFTs and, unless halted, StockX will continue minting, marketing, and selling thousands of additional infringing Nike-branded Vault NFTs.

8. Nike did not approve of or authorize StockX's Nike-branded Vault NFTs. Those unsanctioned products are likely to confuse consumers, create a false association between those products and Nike, and dilute Nike's famous trademarks. Indeed, consumers are already questioning whether Nike authorized StockX to sell its infringing NFT products, asking how StockX received "the licensing to sell NFTs with [N]ike branding." *See* Paragraph 101, *infra*. StockX's misappropriation of Nike's famous trademarks and goodwill to buoy its entry into the lucrative NFT and digital collectible market deprives Nike of its exclusive right to use its marks in connection with this new commercial medium. In addition, the Vault NFTs' inflated prices and murky terms of purchase and ownership, as discussed further below, have already led to public criticism of StockX and allegations that the Vault NFTs are a scam. StockX's prominent use of Nike's trademarks in connection with these dubious virtual products has already generated negative associations with Nike in a way that harms Nike's reputation and the immense goodwill that Nike has amassed in its brands. Consumers have even attributed StockX's conduct to Nike, with one consumer expressing that the Vault NFTs are "just a stupid scam for *Nike* to make money." *See* Paragraph 103, *infra* (emphasis added).

9. Despite StockX's prominent use of Nike's trademarks in connection with the Vault NFTs, Nike has no control over the quality of the Vault NFTs whatsoever. Nike has no say in how many Vault NFTs bearing its trademarks are released, where the Vault NFTs are released and traded, when the Vault NFTs are released, how the Vault NFTs are released, traded, or redeemed, and at what price the Vault NFTs are sold.

10. Nike's widely publicized December 13, 2021 acquisition of RTFKT, a digital art and collectible creative studio, and Nike and RTFKT's very recent launch of the highly anticipated and revolutionary MNLTH and CryptoKicks™ NFTs, demonstrate Nike's recent investment in

NFT technology and services and its sophistication in the NFT space. Prior to these recent developments, however, Nike has been using its famous trademarks in connection with virtual goods and digital applications for years. Given Nike's longstanding use in this space, StockX's unauthorized and unapproved branding of Vault NFTs with Nike trademarks is all the more likely to confuse consumers, create a false association between the parties, jeopardize the capacity of Nike's famous marks to identify its own digital goods in the metaverse and beyond, and harm Nike's reputation through an association with inferior digital products.

11. As noted, StockX has justified its minting and sale of Nike NFTs by claiming that the NFTs are associated with vaulted Nike shoes StockX has "authenticated" using a "proprietary, multi-step authentication process" to ensure "that the products offered for sale are what they claim to be, and are not counterfeit, defective, or used." (Answer at 2.) StockX's defense to Nike's Complaint has thus brought to the forefront its "100% Verified Authentic" claim, "proprietary, multi-step authentication process," and claim that "StockX's customers can trust that transactions made through StockX are safe." (*Id.*) To be sure, given the inflated prices of these so-called "claim tickets," consumers should be able to trust to a certainty that the vaulted Nike shoes purportedly associated with the Nike-branded NFTs are not counterfeit.

12. Notwithstanding StockX's repeated guarantees that every item sold through its platform is "100% Verified Authentic," since December 2021 and continuing through the filing of this action, Nike has obtained from StockX four pairs of purportedly "authenticated" Nike-branded shoes that *Nike* has verified are, in fact, counterfeit. Those four pairs of counterfeit shoes were all purchased within a short two-month period on StockX's platform, all had affixed to them StockX's "Verified Authentic" hangtag, and all came with a paper receipt from StockX in the shoe box stating that the condition of the shoes is "100% Authentic." StockX's refusal to accept returns of

purportedly “100% Verified Authentic” products purchased through its platform make it all the more important for consumers to be able to absolutely trust that the Nike shoes purchased through StockX are not counterfeit.

13. Nike has no visibility into the StockX “vault” and whether any Nike shoes contained therein are counterfeit. However, at least one of the four counterfeit pairs of Nike shoes that Nike obtained from StockX is, in fact, a counterfeit pair of Air Jordan 1 Retro High OG in the Black/Varsity Red-White colorway. StockX depicts the same shoe on one of the eight Nike-branded NFTs for sale on StockX’s platform, which is also currently StockX’s top-selling NFT by total volume sold:



14. Given StockX’s statements that its “vaulted” shoes are sourced from its marketplace and undergo the same “proprietary multi-step authentication process” as the shoes Nike recently discovered were counterfeit, Nike is all the more concerned that StockX has linked the infringing Nike-branded NFTs to counterfeit goods and sold those “claim tickets” to fake shoes at heavily-inflated prices to consumers who had no opportunity to inspect the shoes before reselling the NFT to another unsuspecting consumer.

15. For these reasons, Nike supplements and amends its Complaint to include additional causes of action for counterfeiting and false advertising, and requests that the Court swiftly and permanently stop StockX from continuing to sell Vault NFTs bearing Nike's famous marks, selling counterfeit Nike goods, and making false and/or misleading claims regarding the purported authenticity of those goods.

THE PARTIES

16. Nike is a corporation organized under the laws of the State of Oregon with a principal place of business at One Bowerman Drive, Beaverton, Oregon 97005.

17. On information and belief, StockX LLC is organized as a Michigan LLC with its principal place of business located at 1046 Woodward Avenue, Detroit, Michigan 48226. StockX LLC is an online marketplace and reseller of sneakers, streetwear, electronics, luxury handbags, and other collectibles. StockX maintains various offices and/or facilities located in New York, California, and Oregon, including a store and drop-off facility located at 237 Lafayette Street, New York, New York 10012.

18. On information and belief, StockX is the owner and operator of <https://stockx.com> (the "StockX Website") and StockX mobile application (the "StockX App"), where StockX conducts, *inter alia*, its online commercial activities.

JURISDICTION AND VENUE

19. This action arises under the trademark, anti-dilution, counterfeiting, and false advertising laws of the United States, 15 U.S.C. § 1051, *et seq.*, and under statutory and common law unfair competition. This Court has subject matter jurisdiction at least under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 because this action arises under federal trademark law. This Court has supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.

20. This Court has personal jurisdiction over StockX because StockX has committed, and continues to commit, acts of infringement, dilution, counterfeiting, and false advertising in this District, has conducted, and continues to conduct, business in this District through the StockX Website, StockX App, and a physical store, offices and/or facilities located in this District, and/or has engaged in continuous and systematic activities in this District.

21. Personal jurisdiction is proper pursuant to N.Y. C.P.L.R. § 302(a) because StockX regularly conducts, solicits, or transacts business in New York and in this District. StockX created the StockX Website and StockX App, which are accessible to consumers in New York, and direct false and/or misleading claims, counterfeit Nike goods, and the unauthorized and infringing uses of Nike's trademarks into New York and this District. StockX targets New York consumers by operating the StockX Website and StockX App, by operating a physical store and offices and/or facilities in New York, by employing employees in New York, and by advertising, selling, and offering for sale StockX Vault NFTs through the StockX Website, StockX App, and related social media accounts. Moreover, StockX is actively recruiting employees for several open positions located in New York, New York, including a Director, Real Estate, a Sr. Engineering Manager – NFT and Checkout, a Senior Manager, NFT Partnerships, and a Technical Lead – Notifications.

22. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because StockX conducts and continues to conduct a substantial and significant amount of business in this District, a substantial part of the events giving rise to these claims arose in this District, and customer confusion is likely to occur in this District. Moreover, on information and belief, the locus of StockX's Vault NFT and Web3 initiative appears to be in this District. For example, StockX's Director, Innovation along with the lead software engineer responsible for developing and launching StockX's NFT offering are, on information and belief, located in New York. Moreover,

StockX's January 18, 2021 announcement of its Vault NFT offering was issued by its Editorial Director based in New York City. See <https://stockx.com/news/introducing-nfts-on-stockx/>. StockX is also actively recruiting in this District for employees to join its NFT and Web3 program. As just one example, this year through the filing of this action StockX had postings for the following senior positions located in New York: Sr. Engineering Manager – NFT and Checkout; and Senior Manager, NFT Partnerships.

FACTUAL BACKGROUND

NFTs and Blockchain

23. While blockchains have myriad actual and potential uses, a primary use is to serve as an ecosystem and ledger for blockchain-based assets, like cryptocurrencies (such as Bitcoin (BTC) and Ether (ETH)) and NFTs. Much like banks track ownership of money in bank accounts and process transfers from one account to another, storing the information privately, blockchain technology enables the transfer of ownership of cryptocurrencies and NFTs between accounts, storing the information of the transfer of ownership in blocks of data visible for all to see. A distinguishing and touted feature of blockchains is decentralization. Unlike bank or other asset ledgers, which are typically maintained by one or more larger entities, blockchains can be maintained by innumerable individuals and entities, acting relatively independently but participating in a coordinated ecosystem. Today there exist many blockchains, the largest of which supports the Bitcoin cryptocurrency, while the second largest of which, Ethereum, supports a much broader set of assets, including both the Ether cryptocurrency and NFTs that are stored and traded on the Ethereum blockchain network.

24. Many blockchain-based assets, like cryptocurrencies, are “fungible.” Like money in a bank account, each individual coin (or “token”) is not distinguishable from others and is divisible. For this reason, cryptocurrencies may function as a medium of exchange.

25. By contrast, certain tokens, referred to as “non-fungible tokens” or “NFTs,” are both indivisible and uniquely identifiable. Their movement can be tracked from one blockchain address to another via smart contracts. This feature makes it possible to use NFTs to track ownership or licensed rights over assets, similar to a certificate of ownership or real estate title.

26. NFTs have been widely used to track ownership over rights (often a limited license for personal use) to a new type of digital collectible, which may be a digital photograph, video, artwork, sound recording, avatar, digital clothing, footwear and other products, or other type of media. These NFT collectibles can be bought, sold, resold, and generally traded on various platforms.

27. While such NFT collectibles have existed for years, beginning in early 2021 interest exploded. Many prominent apparel and consumer goods brands have successfully launched and sold NFT collections, incorporating their trademarks, trade dress, and other intellectual property into artwork associated with each NFT. These NFTs have taken many different forms but have always closely connected the trademark owner with the digital asset. As further discussed below, Nike is one such market entrant.

Nike’s Business and Valuable Trademark Rights



28. Nike’s principal business activity is the design, development, and worldwide marketing and selling of athletic footwear, apparel, equipment, accessories, and services.

29. As a result of decades of Nike’s advertising, promotional, and marketing efforts, Nike has established itself as a multibillion-dollar brand and the world’s leading designer,







marketer, and distributor of athletic footwear and apparel products which are sold in connection with Nike's famous trademarks. In addition to spending significant amounts in support of advertising and promotion of its products and services, Nike conducts successful marketing campaigns across various social media platforms, including Facebook, Twitter, YouTube, Instagram, TikTok, and Snapchat, to further promote Nike's products, services, brands, and trademarks.


30. Nike and its brands have achieved widespread recognition and fame throughout the United States and the world. Among the purchasing public, Nike's products and services are instantly recognizable and are seen as high-quality, innovative, and dependable.

31. Nike is the owner of the right, title, and interest in and to, *inter alia*, the following trademarks registered on the Principal Register of the United States Patent and Trademark Office (collectively, the "Asserted Marks"):

Reg. No.	Title	Trademark Design	Reg. Date	Classes
1,370,283	AIR JORDAN	AIR JORDAN (word mark)	11/12/1985	25- Clothing, footwear
3,725,535	Air Jordan & Wings Design* ¹		12/15/2009	25- Clothing, footwear, headgear
3,780,236	DUNK	DUNK (word mark)	4/27/2010	25- Footwear
3,627,820	JUMPMAN	JUMPMAN (word mark)	9/11/2007	25- Clothing, footwear, headgear
1,558,100	JumpMan Design		9/26/1989	25- Clothing, Footwear

¹ * indicates unofficial, descriptive title.

1,742,019	JumpMan Design		12/22/1992	25- Clothing, footwear, headgear 18- Leather and imitations of leather
978,952	NIKE	NIKE (word mark)	2/19/1974	25- Clothing, footwear, headgear
1,214,930	NIKE	NIKE (word mark)	11/2/1982	25- Footwear
1,243,248	NIKE	NIKE (word mark)	6/21/1983	42- Retail footwear and apparel services
6,124,779	NIKE	NIKE (word mark)	8/11/2020	35- Retail store services and on-line retail store services
1,238,853	NIKE & Swoosh Design*		5/17/1983	42- Retail footwear and apparel services
1,325,938	NIKE & Swoosh Design*		3/19/1985	25- Footwear
5,286,596	NIKE AIR VAPORMAX	NIKE AIR VAPORMAX (word mark)	9/12/2017	25- Footwear
977,190	Swoosh Design		1/22/1974	25- Footwear
1,264,529	Swoosh Design		1/17/1984	42- Retail footwear and apparel services
1,323,343	Swoosh Design		3/5/1985	25- Footwear

5,794,674	Swoosh Design		7/2/2019	35- Retail store services and on-line retail store services
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32. The above U.S. registrations for Nike's Asserted Marks are valid, subsisting, unrevoked, uncanceled, and in full force and effect.

33. Pursuant to 15 U.S.C. § 1065, of Nike's Asserted Marks, the following federally registered Nike trademarks are incontestable and constitute *prima facie* evidence their validity, Nike's ownership, and Nike's exclusive right to use these marks:

- a. Reg. No. 1,370,283 (AIR JORDAN word mark)
- b. Reg. No. 3,725,535 (Air Jordan & Wings Design mark);
- c. Reg. No. 3,780,236 (DUNK word mark);
- d. Reg. No. 3,627,820 (JUMPMAN word mark);
- e. Reg. No. 1,558,100 (JumpMan Design mark);
- f. Reg. No. 978,952 (NIKE word mark);
- g. Reg. No. 1,214,930 (NIKE word mark);
- h. Reg. No. 1,243,248 (NIKE word mark);
- i. Reg. No. 977,190 (Swoosh Design mark);
- j. Reg. No. 1,264,529 (Swoosh Design mark);
- k. Reg. No. 1,323,343 (Swoosh Design mark);
- l. Reg. No. 1,238,853 (Swoosh Design mark); and
- m. Reg. No. 1,325,938 (Swoosh Design mark).

34. Nike also owns extensive common law rights in the Asserted Marks for use in connection with Nike's goods and services. Nike uses the Asserted Marks on or in connection with many of its products and services.

35. Nike's Asserted Marks identify, in the United States and throughout the world, high-quality products and services designed, produced, and offered by Nike.

36. Nike intends to continue to preserve and maintain its rights in the Asserted Marks. Nike has continuously used the Asserted Marks in interstate commerce in connection with the sale, distribution, promotion, and advertising of genuine Nike goods and services since their respective dates of first use as noted on the federal trademark registration certificates. And, as discussed further below, Nike has also used the Asserted Marks in connection with virtual products and intends to further expand such use as reflected in its pending trademark applications.

37. As a result of continuous and long-standing promotion, substantial sales, and consumer recognition, Nike has developed powerful trademarks rights, built substantial goodwill in the Asserted Marks, and has never abandoned that goodwill. As a result, Nike's Asserted Marks have become distinctive and "famous" within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

38. Having distinctive trademarks that are readily identifiable is an important factor in creating and maintaining a market for Nike's products, in identifying Nike and its brands, and in distinguishing Nike's products from the products of others.

39. Nike maintains strict quality control standards for products bearing the Asserted Marks. Genuine Nike products bearing the Asserted Marks are inspected and approved by Nike prior to distribution and sale.

40. Nike also maintains strict control over the use of the Asserted Marks in connection with its products so that the company can maintain control over its reputation and goodwill. Nike, for example, carefully determines how many products bearing the Asserted Marks are released, and when, where, and how those products are sold.

Nike's Activities in the Virtual Products Market

41. Nike has used the Asserted Marks in connection with a variety of physical goods and associated services for decades. Nike has also for some time incorporated the Asserted Marks into its virtual products. For example, in October 2019, Nike, through its SNKRS mobile application, partnered with 2K Sports, makers of the NBA 2K basketball videogame franchise, to offer “Gamer Exclusives,” limited edition digital and physical Nike sneakers that NBA 2K20 players can unlock through gameplay. See <https://news.nike.com/news/nba-2k20-x-nike-gamer-exclusives>.

42. On October 27 and 28, 2021, Nike filed applications to register the following trademarks with the United States Patent and Trademark Office for use in connection with, *inter alia*, “[d]ownloadable virtual goods, namely computer programs featuring footwear,” (*i.e.*, digital sneaker NFTs) and “[r]etail store services featuring virtual goods, namely footwear” (*i.e.*, a digital sneaker NFT trading platform):

- a. NIKE (word mark) (Serial No. 97095855);
- b. JORDAN (word mark) (Serial No. 97096950);



- c. (Serial No. 97096952);



- d. (Serial No. 97096945);



- e. (Serial No. 97095944); and



f. (Serial No. 97096366).

43. On December 13, 2021, Nike announced that it had acquired RTFKT, a leading digital art and collectible creative studio that has created some of the most popular apparel-related digital artwork NFT releases to date, including the CYBERSNEAKER, METAJACKET, and FEWO Shoes, collectible digital sneakers designed in collaboration with teenage pop artist FEWOCIOUS. See <https://news.nike.com/news/nike-acquires-rtfkt>.

44. On or around January 18, 2022, Nike announced to its employees the formation of Nike Virtual Studios, a new division that will operate as an independent studio to further develop Nike's business around virtual products and partner with its core business to deliver best-in-class Web3, metaverse, and blockchain-based experiences.

45. On February 7, 2022, Nike and RTFKT released the MNLTH NFT collection by "airdropping" each NFT directly to the then-current owners of RTFKT's Clone X and PodX NFTs. The MNLTH NFT is depicted below:



46. On April 22, 2022, Nike and RTFKT released the Nike Dunk Genesis CryptoKicks™ NFTs, along with the Evo Skin Vial NFTs, which allow owners of the Nike Dunk

Genesis NFTs to customize the colorway of the digital shoes. Examples of the Nike Dunk Genesis CryptoKicks™ and Evo Skin Vial NFTs are depicted below:



47. The Nike initiatives discussed above have been highly publicized, and the recent release of the successful RTFKT x Nike Dunk Genesis CryptoKicks™ NFTs reflects Nike’s deep understanding of the NFT market. Upon information and belief, StockX has known about Nike’s plans to expand into the NFT market long prior to its January 2022 “Vault NFT” launch.

StockX’s Resale Platform

48. StockX, like eBay, operates an online marketplace for the resale of sneakers, streetwear, electronics, luxury handbags, and other collectibles accessible to consumers on the StockX Website and StockX App. Upon information and belief, StockX does not sell goods directly to consumers; rather, StockX’s users buy and sell goods from each other on StockX’s platform. StockX is not an authorized distributor of Nike goods.

49. Unlike the eBay model, however, StockX is an active intermediary for each transaction—the seller ships the item to StockX, StockX receives and purportedly verifies the item’s authenticity, StockX then ships the item to the buyer with a StockX-branded verification badge, and StockX pays the seller (less its transaction fees). See <https://stockx.com/about/how-it-works/>.

50. In fact, as StockX alleged in its Answer to Nike’s Complaint:

StockX uses a proprietary, multi-step authentication process for every product sold on its platform. This process ensures that items traded on StockX conform to the product descriptions and condition standards advertised by StockX, and that the products offered for sale are what they claim to be, and are not counterfeit, defective, or used—meaning StockX’s customers can trust that transactions made through StockX are safe. StockX has authenticated tens of millions of products since its formation, combining its authentication team’s expert knowledge with AI-enhanced technology to allow global customers to trade with confidence.

(Answer at 2.)

51. StockX falsely and/or misleadingly claims on the StockX Website that every item StockX sells on its e-commerce platform—including those items purportedly associated with the Vault NFTs—has been independently verified by StockX as “100% Verified Authentic.” Specifically, StockX states that “Every item sold goes through our proprietary multi-step verification process with our team of expert authenticators.” <https://stockx.com/about/how-it-works/>. According to StockX, its rigorous, multi-step verification procedure uses “100+ data points,” and that its “authenticators are better equipped than anyone to ensure a product’s authenticity.” <https://stockx.com/about/authentication/>. StockX misleadingly claims that this “multi-step verification process” authenticating products is somehow “proprietary,” despite the fact that StockX is not the entity that designed, created, manufactured, packaged, or shipped in the first instance any genuine Nike goods, and despite the fact that much of the process itself is openly displayed in a video found on StockX’s website. StockX prominently advertises this guarantee of “100% Verified Authentic” and the value its authentication services provide consumers throughout the StockX Website, as exemplified below:

Guaranteed Authenticity.

Every item. Every time. Shop on StockX with complete confidence knowing every purchase is 100% Verified Authentic.


How does verification help me as a Buyer or a Seller?
4/8/2022

Part of the value when you buy or sell on StockX is our verification process performed at our Authentication Centers. StockX maintains rigorous internal guidelines to ensure that everything on the site meets our standards. This commitment to quality is one of the reasons you can feel empowered buying and selling on StockX, knowing that your item is in good hands.

For Buyers, the verification process means you can expect your item to arrive in perfect condition and know that it's been independently inspected for variations and more before it's sent to you.


For Sellers, the verification process marks the end of your transaction with the Buyer, getting you paid and leaving the customer service aspects of the transaction to us so you can get back to selling! When you sell on StockX, the verification process allows you to focus on the reason why you're there in the first place, while we take care of the logistics.

52. On the StockX Website, StockX also advertises that it utilizes “Advanced Technology” and “Quality Assurance” with respect to its authentication services and claims that it employs quality assurance “experts” to ensure that only authentic goods are sold on its platform:



Advanced Technology

We use machine learning to aid our authenticators in catching every minor detail.



Quality Assurance

A final check in our authentication practice, our QA experts ensure nothing slips through the cracks.

53. StockX also claims that it has “compiled data from every fake product in the history of StockX to build a comprehensive database of fake techniques around the world.” It also

advertises an authentication accuracy rate of “99.95%” but does not explain how this number is substantiated.

54. The confirmed purchase of counterfeit Nike goods on StockX’s platform—including the same style purportedly associated with at least one of the infringing Nike-branded Vault NFTs—confirms that StockX’s claims about its “proprietary multi-step verification process,” “100% Verified Authentic,” and authentication accuracy rate of “99.95%” are false and/or misleading.

55. According to StockX’s most recent annual report, Nike’s brands and shoes dominate StockX’s marketplace. For example, three of Nike’s brands—JORDAN, NIKE, and CONVERSE—were the among the top five trading footwear brands by volume on StockX’s marketplace in 2021:

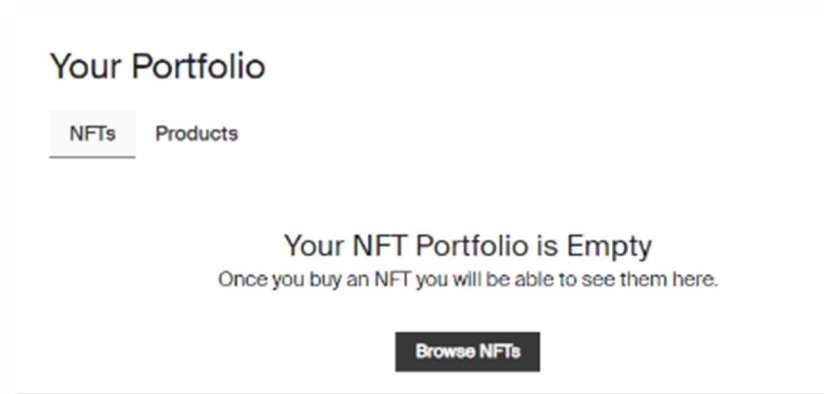


StockX's Vault NFTs

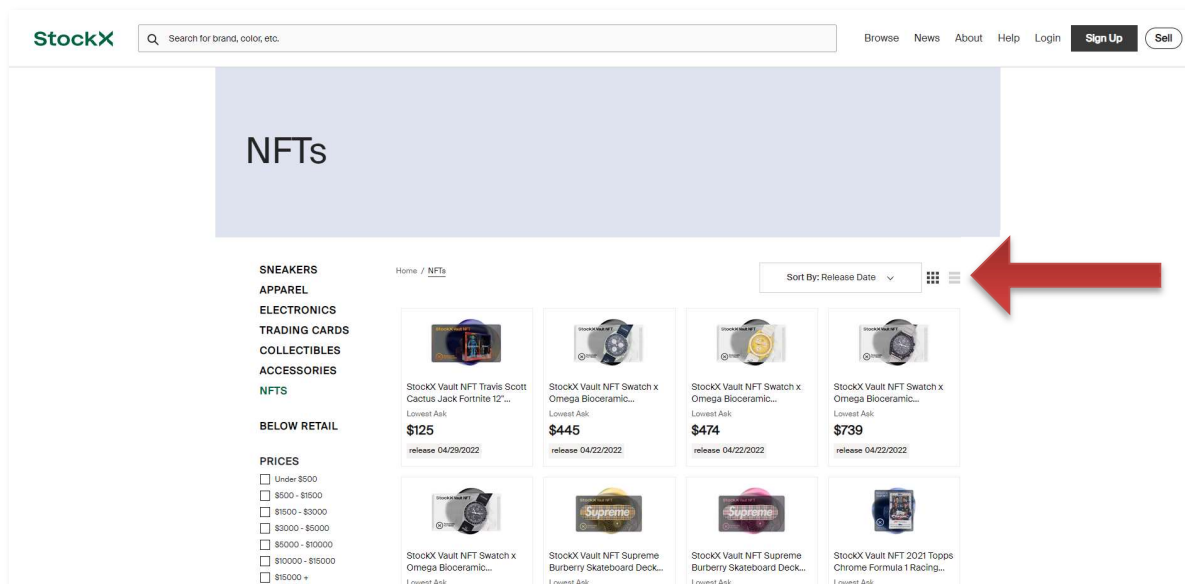
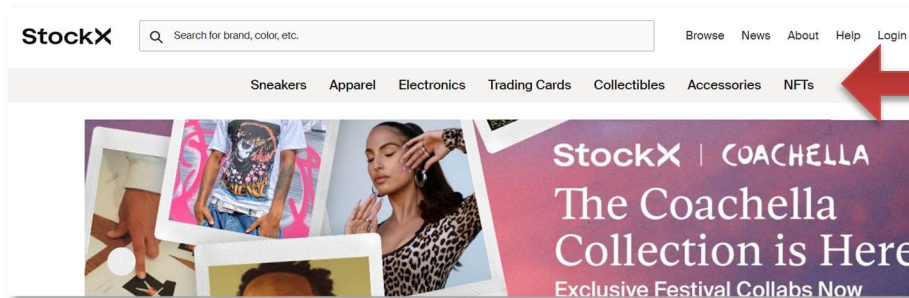
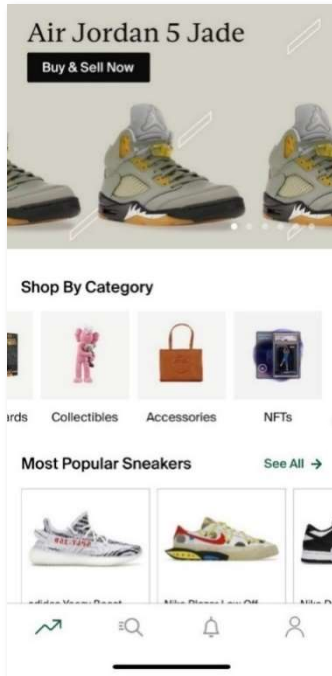
56. On January 18, 2022, StockX's New York-based Editorial Director announced the launch of StockX Vault NFTs, a collection of NFTs that StockX's users purchase directly from StockX through the StockX Website and StockX App. See <https://stockx.com/news/introducing-nfts-on-stockx/>. StockX claims the Vault NFTs are associated with a unique physical product held in StockX's custody until the NFT owner "redeems" the NFT in exchange for the associated physical product or some other benefit.

57. Unlike the physical goods StockX’s users may sell through its online resale platform—which are manufactured and/or distributed in the first instance by Nike and other brands or their authorized distributors—StockX’s Vault NFTs are virtual products, *i.e.*, digital collectibles, created and first offered for sale by *StockX*, and available direct to consumers for purchase and trade on the StockX Website and StockX App.

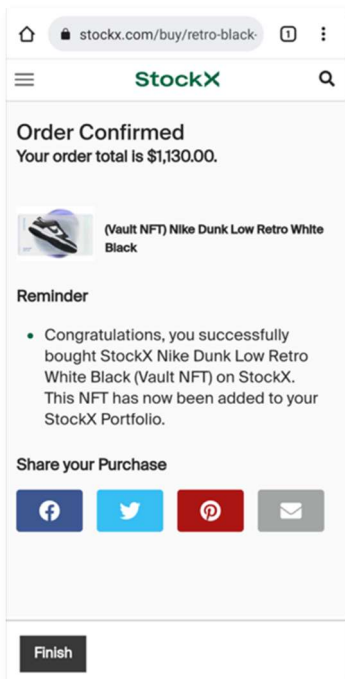
58. StockX markets its Vault NFTs as exciting new product offerings. StockX advertises to consumers that these “digital assets” can be traded or collected. StockX markets the thrill of purchasing an NFT, not a “claim ticket” for goods available on its platform. For example, StockX added a separate “NFT Portfolio” allowing owners of Vault NFTs to collect, track, and display their NFTs.



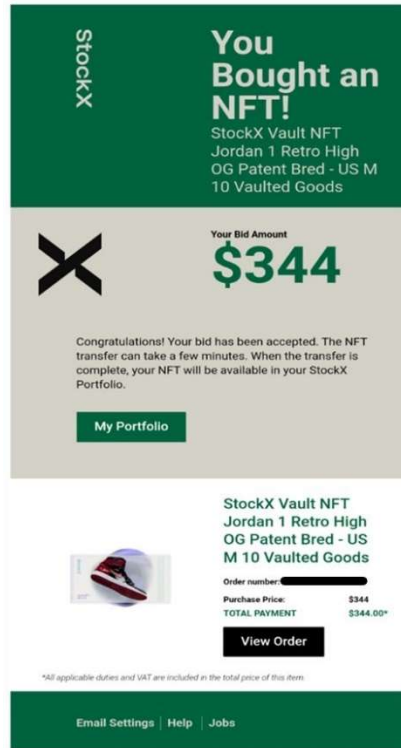
59. StockX also modified its platform to allow consumers to shop for “NFTs” as a new product “Category.” The NFT “Category” is separate from the categories of physical goods that have been historically available for resale on StockX’s platform. Consumers can sort the “NFTs” listed in the Category by “Release Date.” Those “release” dates correspond to the dates that StockX first released each NFT, not the date that the original manufacturer first released any purportedly associated physical product.



60. Upon purchase of a Vault NFT, the StockX Website confirms to the consumer that they have bought an NFT (not a pair of physical shoes) by stating: “Congratulations, you successfully bought StockX Nike Dunk Low Retro White Black (Vault NFT) on StockX. The NFT has now been added to your StockX Portfolio” and allowing the consumer to “share” the NFT purchase via e-mail or social media:

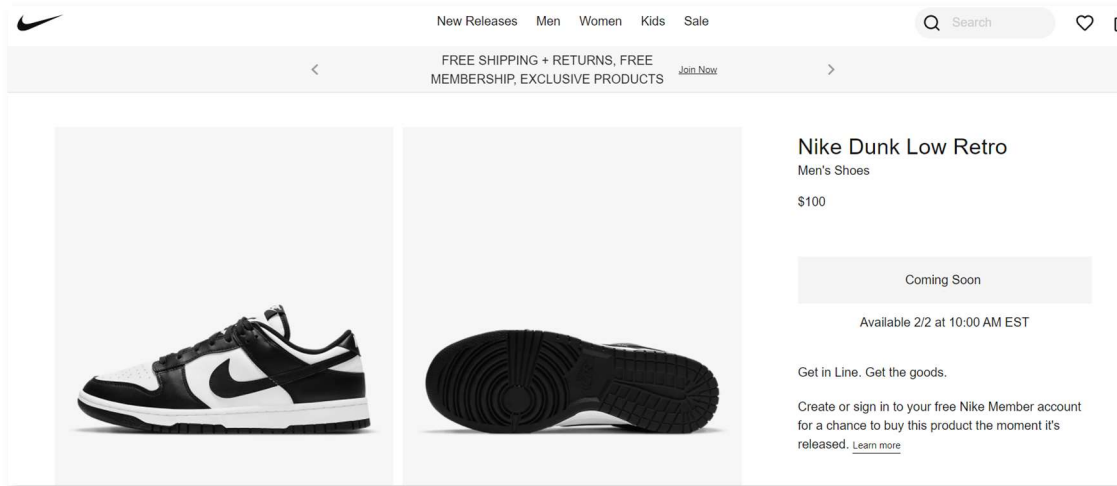


61. At the point of purchase StockX also e-mails the Vault NFT consumer confirmation that they have purchased an NFT (not a pair of physical shoes) by exclaiming in large, bold font at the top of the e-mail: “**You Bought an NFT!**” The e-mail further states to the consumer: “Congratulations! Your bid has been accepted. The NFT transfer can take a few minutes. When the transfer is complete, your NFT will be available in your StockX Portfolio.”



62. Nowhere on the StockX Order Confirmation Webpage or StockX Order Confirmation e-mail does StockX expressly state that the consumer purchased a physical item instead of an NFT. StockX does not inform the consumer that it bought a “claim ticket” linked to an underlying physical item. StockX does not state: “Congratulations, you just bought a pair of Nike or Jordan shoes.” Instead, StockX congratulates the consumer on purchasing an NFT because the NFT is the product that the consumer purchased.

63. StockX has sold Nike-branded Vault NFTs at prices many multiples above the price of the physical Nike shoe. For example, the 2022 version of the Nike Dunk Low – Retro White Black (*i.e.*, the physical pair of shoes) will retail for \$100 from nike.com:



According to StockX's marketplace, as of February 2, 2022, the average sale price for the 2021 version of the shoes is \$282:

StockX

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Home / Sneakers / Nike / Dunk / Low / Nike Dunk Low Retro White Black (2021)

+
♥
↻

Nike Dunk Low

Retro White Black (2021)

100% Authentic
Condition: New

Size: US M 10 ▾

Buy
or Bid

Lowest Ask

\$297

Buy Now Starting at \$29/mo with [affirm](#). [Prequalify Now](#)

Sell
or Ask

Highest Bid

\$272

Last Sale:

\$282

▲ \$25 (9.5%)

View Asks
View Bids
View Sales

Related Products

Nike Dunk Low Retro White Black (GS)

Lowest Ask

\$202

Last Sale: \$208

Nike Dunk Low Retro White Black (TD)

Lowest Ask

\$88

Last Sale: \$85

Nike Dunk Low Retro White Black (PS)

Lowest Ask

\$93

Last Sale: \$80

Nike Dunk Low White Black (2021) (W)

Lowest Ask

\$240

Last Sale: \$241

Nike Dunk High Black White (2021)

Lowest Ask

\$198

Last Sale: \$197

Product Details

Style **DD1391-100**

Colorway **WHITE/BLACK**

Retail Price **\$110**

Release Date **3/9/2021**

Product Description

From the school-spirited College Colors Program to the vibrant Nike CO.JP collection, Nike Dunks have seen many colorways since the design's inception in 1985. But with each new colorway, the Dunk's classic color-blocking has remained in some capacity. Nike put its

[Read More](#)

Price History

1M
3M
6M
YTD
1Y
All

View Sales >

12-Month Historical

\$220 - \$379

12-Month Trade Range

\$271 - \$292

All-Time Trade Range

4%

Volatility

12,464

Number of Sales

156%

Price Premium

\$282

Average Sale Price

Yet, as of February 2, 2022, the average price of the Vault NFT purportedly linked to these shoes is **\$809**, with the highest trade being **\$3500**:


StockX



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Nike Dunk Low Retro White Black (Vault NFT)

US M 10

NFT 100% Authentic Edition of 100




Buy or Bid Lowest Ask
\$739

Sell or Ask Highest Bid
\$655

Last Sale:
\$620
▼ -\$50 (-75%)

View Asks
View Bids
View Sales


Related Products



StockX Nike Dunk Low Off-White Lot 50 (Vault...)

Lowest Ask
\$20,000


Last Sale: \$7,500



StockX Air Jordan 4 Retro White Ore (Vault...)

Lowest Ask
\$857


Last Sale: \$823



StockX Nike SB Dunk Low Ben & Jerry's...

Lowest Ask
\$42,069


Last Sale: \$5,000



StockX KAWS Sacai Nike Blazer Low Blue (Vault...)

Lowest Ask
\$749

Last Sale: \$667



StockX Jordan 1 Retro High OG Patent Bred...

Lowest Ask
\$527

Last Sale: \$529

Product Details


Product Description

One of the most popular Nike Dunks of 2021 is now a part of StockX's Vault NFT experience. Each Vault NFT is backed by a physical item held in StockX's custody, tied directly one-to-one via the blockchain. This means that if you buy an edition of a Vault NFT, you are the owner of

[Read More](#)

Price History

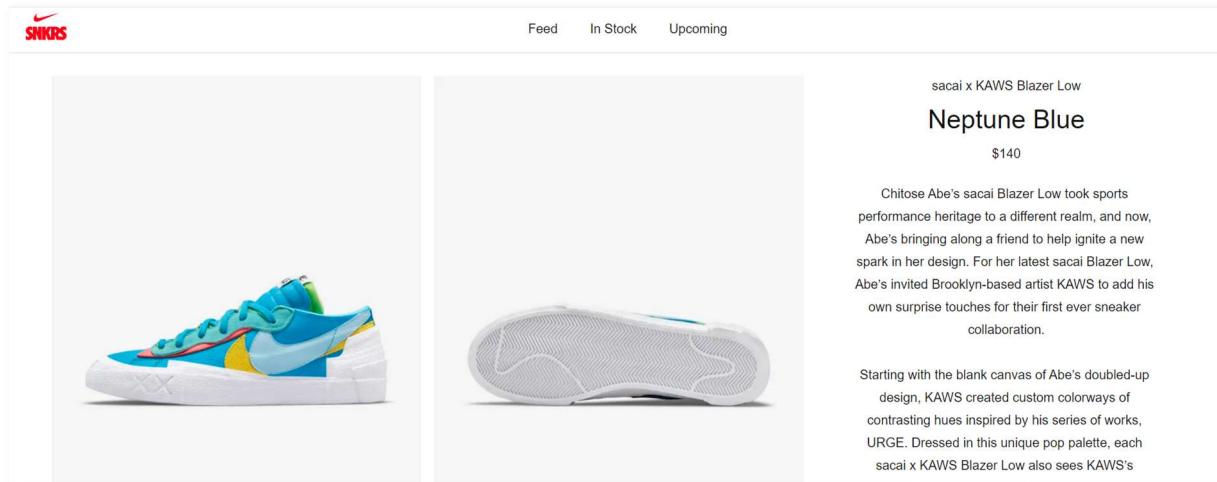
1M 3M 6M YTD 1Y **All**
View Sales >



12-Month Historical

<p style="font-weight: bold; margin: 0;">\$220 - \$3,500</p> <p style="font-size: 0.7em; margin: 0;">12-Month Trade Range</p>	<p style="font-weight: bold; margin: 0;">\$517 - \$723</p> <p style="font-size: 0.7em; margin: 0;">All-Time Trade Range</p>	<p style="font-weight: bold; margin: 0;">17%</p> <p style="font-size: 0.7em; margin: 0;">Volatility</p>
<p style="font-weight: bold; margin: 0;">183</p> <p style="font-size: 0.7em; margin: 0;">Number of Sales</p>	<p style="font-weight: bold; margin: 0;">--</p> <p style="font-size: 0.7em; margin: 0;">Price Premium</p>	<p style="font-weight: bold; margin: 0;">\$809</p> <p style="font-size: 0.7em; margin: 0;">Average Sale Price</p>

64. Another example is the sacai x KAWS Blazer Low Neptune Blue size 10 M which retails for \$140 from nike.com:



According to StockX's marketplace, as of February 2, 2022, the average sale price for the shoes is \$205:

StockX

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Home / Sneakers / Nike / Basketball / Other / Nike Blazer Low Sacai KAWS Neptune Blue
🛒 ❤️ ➔

Nike Blazer Low

sacai KAWS Neptune Blue

100% Authentic Condition: New

Size: US M 10 ▾

Buy or Bid

Lowest Ask
\$165

Buy Now Starting at \$17/mo with [affirm](#). [Prequalify Now](#)

Sell or Ask

Highest Bid
\$150

Last Sale: **\$155**
▼ -\$7 (-4.3%)

[View Asks](#) [View Bids](#) [View Sales](#)

Related Products

Nike Blazer Low sacai
KAWS Red

Lowest Ask
\$127

Last Sale: \$143

Nike Blazer Low sacai
KAWS Reed

Lowest Ask
\$145

Last Sale: \$187

Nike Blazer Low sacai
British Tan

Lowest Ask
\$84

Last Sale: \$71

Nike SB Blazer Metric
Blue

Lowest Ask
\$232

Last Sale: \$201

Nike Blazer Low Leche
Blue (W)

Lowest Ask
\$104

Last Sale: \$120

Product Details

Style **DM7901-400**

Colorway **NEPTUNE BLUE/LIGHT BLUE-PINK-YELLOW**

Retail Price **\$140**

Release Date **11/26/2021**

Product Description

The Nike Blazer Low sacai KAWS Neptune Blue features a Neptune Blue leather upper with multicolored overlapping eyestays and Swooshes, drawing inspiration from the palettes prevalent in KAWS' most renowned pieces of art. On the stacked outsole, KAWS XX insignias are debossed on the lateral toe. Doubled tongues and laces add the finishing touch.

The Nike Blazer Low sacai KAWS Neptune Blue releases in November of 2021 and retailed for \$140.

Price History

1M 3M 6M YTD 1Y All

[View Sales >](#)

12-Month Historical

\$150 - \$2,000

12-Month Trade Range

\$143 - \$167

All-Time Trade Range

8%

Volatility

557

Number of Sales

11%

Price Premium

\$205

Average Sale Price

As of February 2, 2022, the average price, however, of the Vault NFT purportedly linked to these shoes is **\$590**, with the highest trade being **\$3995**:

StockX

Browse News About Help Login **Sign Up** **Sell**

KAWS Sacai Nike Blazer Low Blue (Vault NFT)

US M 10

NFT 100% Authentic Edition of 100

Buy or Bid

Lowest Ask
\$749

Sell or Ask

Highest Bid
\$666

Last Sale:
\$667
▼ -\$32 (-4.6%)

View Asks
View Bids
View Sales

Related Products

StockX Nike Dunk Low Retro White Black (Vault...)

Lowest Ask
\$739

Last Sale: \$620

StockX Nike Dunk Low Off-White Lot 50 (Vault...)

Lowest Ask
\$20,000

Last Sale: \$7,500

StockX adidas Forum Low Bad Bunny (Vault...)

Lowest Ask
\$6,666

Last Sale: \$650

StockX Nike SB Dunk Low Ben & Jerry's...

Lowest Ask
\$42,069

Last Sale: \$5,000

StockX Women's Nike Air VaporMax 2019 Cactus...

Lowest Ask
\$3,000

Last Sale: \$2,200

Product Details

Product Description

One of the most colorful collaborations in recent years, the blue KAWS Nike sacai Blazer Low is now a part of StockX's Vault NFT experience. Each Vault NFT is backed by a physical item held in StockX's custody, tied directly one-to-one via the blockchain. This means that if you

[Read More](#)

Price History

1M
3M
6M
YTD
1Y
All

View Sales >

12-Month Historical

\$120 - \$3,995

12-Month Trade Range

\$560 - \$774

All-Time Trade Range

16%

Volatility

171

Number of Sales

--

Price Premium

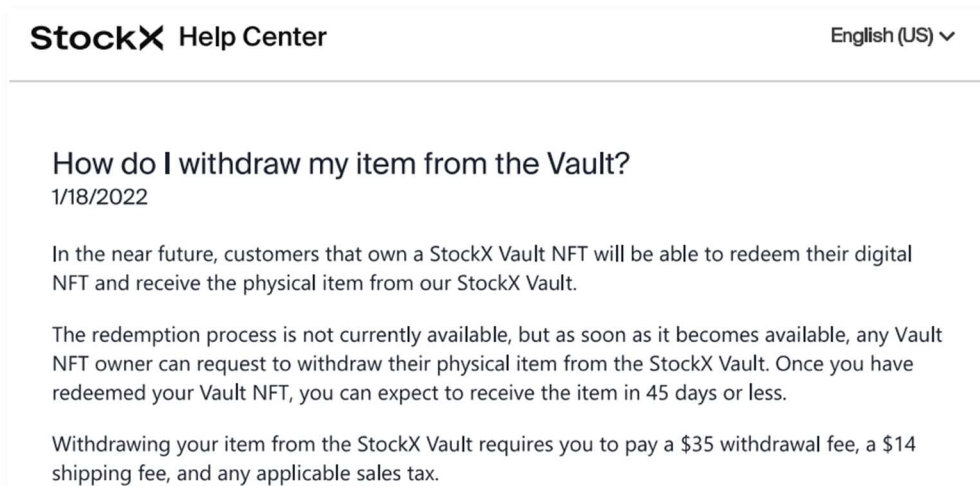
\$590

Average Sale Price

65. These significant price discrepancies continue, and as of the current date certain Nike-branded Vault NFTs are still selling for thousands of dollars above the price of the physical shoe.

66. As of the date Nike filed this action, StockX stated that the Vault NFTs are minted on the Ethereum blockchain, “offering owners the opportunity to invest in current culture, with cross-platform liquidity on the horizon.” See <https://stockx.com/lp/nfts/>. As of the date Nike filed this action, StockX also stated that Vault NFT owners may be granted exclusive access to StockX benefits, promotions, experiences, and rewards. *Id.*

67. As of the date Nike filed this action, StockX further stated that NFT owners may redeem the token to have the shoes delivered at any time. But, as shown below, StockX also simultaneously stated that the “redemption process is not currently available,” but may be sometime in the “near future.”



Upon redemption, StockX states that it will remove the shoes from the vault, charge “a \$35 withdrawal fee, a \$14 shipping fee, and any applicable sales tax” on top of the price the owner paid for the Vault NFT, and ship them to the owner. See <https://stockx.com/help/articles/What-fees-are-associated-with-Vault-NFTs>. StockX will then remove the Vault NFT from circulation

by deleting it from the owner's portfolio (*i.e.*, StockX will "burn" the Vault NFT). *See, e.g.*, <https://stockx.com/retro-black-and-white-dunk-vault-nft>.

68. StockX's Terms and Conditions, as of the date Nike filed this action, included sections titled "Vault Terms" and "NFT Terms" (collectively, the "Vault NFT Terms") which govern the Vault NFT offerings. *See* <https://stockx.com/terms>.

69. According to the Vault NFT Terms in place as of the date Nike filed this action, when a consumer purchases a Vault NFT, the consumer gains title to both the purchased Vault NFT (*i.e.*, the digital collectible) and the Stored Item (*i.e.*, the physical goods) to which the NFT corresponds, and the consumer automatically makes use of StockX's Vault Services (*i.e.*, storage of the physical goods in StockX's facility). *Id.*

70. As of the date Nike filed this action, the Vault NFT Terms also stated that (i) a Vault NFT (*i.e.*, the digital collectible) has no value beyond that of the associated Stored Item (*i.e.*, the physical goods), and (ii) the Vault Services are currently provided by StockX at no additional cost; however, a Vault NFT owner may be required to pay additional fees if they elect to have a Stored Item shipped to them or if they use the Vault Services past January 31, 2023. *Id.*

71. Notably, under the Vault NFT Terms in place from launch through at least the date Nike filed this action, StockX also retained the right to *unilaterally* redeem a Vault NFT for a so-called "Experiential Component," and cancel or take away the NFT, *i.e.*, the Vault NFT owner never receives the physical version of the shoes or loses the opportunity to do so. Specifically, the Vault NFT Terms stated, "Note that in some cases, per the applicable Additional NFT Terms, StockX may automatically redeem your NFT for an Experiential Component,² at its sole discretion,

² As of the date Nike filed this action, the phrase "Experiential Component" was explained and defined under the Vault NFT Terms as follows: "NFTs may take a variety of forms, and the holders of NFTs may be entitled to obtain certain products, benefits or engage in certain experiences, such

in which case StockX may remove the NFT from your portfolio and you will cease to own the NFT.” See <https://stockx.com/terms>:

iii. **NFT License.** Subject to your complete and ongoing compliance with these NFT Terms and the StockX Terms and Conditions of Use, StockX grants you a limited, non-exclusive, non-transferable (except in connection with a Secondary Sale), non-sublicensable, revocable license to (a) resell, solely on the Services, any NFT you purchase, (b) hold the NFT until it may be used or redeemed for its intended purpose, as decided by StockX in its sole discretion, and (c) use any intellectual property (or related intellectual property rights) included in the NFT (“NFT IP”) solely as expressly permitted by the NFT Terms. For clarity, except for the foregoing license, neither your purchase of an NFT nor these NFT Terms grant you any other license or rights to any NFT or NFT IP. Note that in some cases, per the applicable Additional NFT Terms, StockX may automatically redeem your NFT for an Experiential Component, at its sole discretion, in which case StockX may remove the NFT from your portfolio and you will cease to own the NFT.

72. Upon information and belief, the provision in Paragraph 70 stating that the Vault NFT has no value apart from the physical shoes directly conflicted with the terms described in Paragraph 71 above: because StockX retained the right to redeem the Vault NFT for an Experiential Component, the Vault NFT does, in fact, have value apart from the physical shoes. The provision likewise directly conflicted with StockX’s other previous statement that the Vault NFT includes additional benefits beyond the physical shoes, such as “exclusive access to StockX releases, promotions, events, as a result of ownership.”

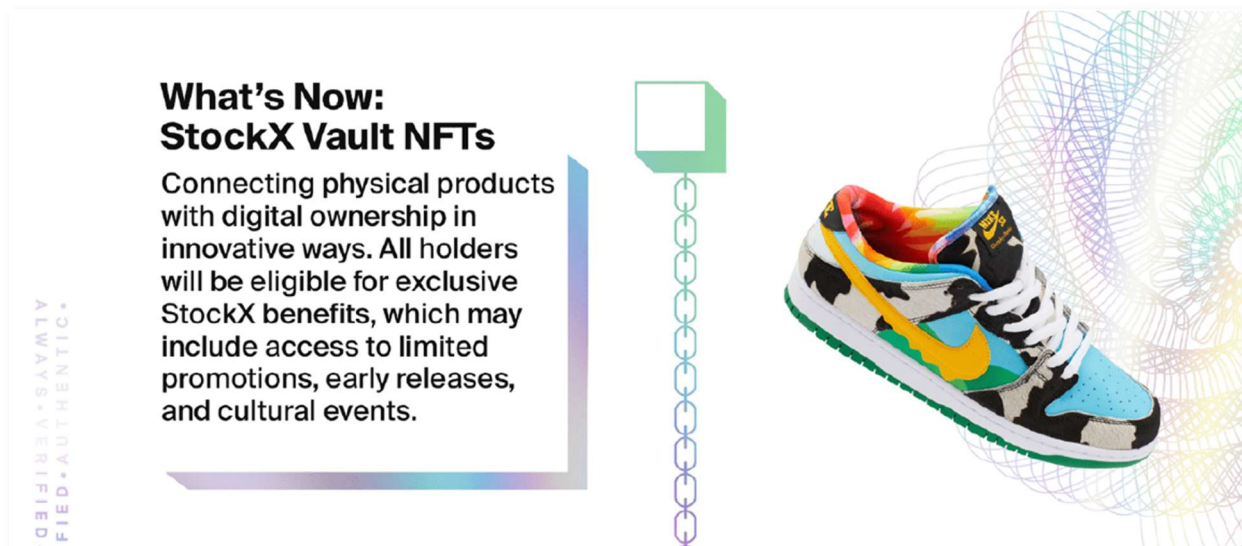
Every NFT is minted on the blockchain, offering owners the opportunity to invest in current culture, with cross-platform liquidity on the horizon. Owners may also receive exclusive access to StockX releases, promotions, events, as a result of ownership.

73. Since Nike filed this action and, upon information and belief, after StockX already sold off and provided a platform for the resale of all the infringing Nike-branded NFTs, StockX repeatedly revised these terms and statements. For example, from January 18, 2022 through at least April 25, 2022, StockX included the following statements on its NFT landing page, currently

as unlocking a prize or entry into an exclusive sale (“Experiential Component”), as determined by StockX in its sole discretion, subject to any additional terms provided by StockX with or in connection with the purchase of such NFT (“Additional NFT Terms”).” See <https://stockx.com/terms>.

located at <https://stockx.com/lp/nfts/>, which Nike pointed out to the Court in a statement filed on March 31, 2022 [Dkt. No. 23]:

Introducing NFTs on StockX, new digital tokens providing unprecedented access and utility for our global community. These exclusive NFTs connect coveted physical products with investable digital assets, from sneakers to creators to experiences and more.



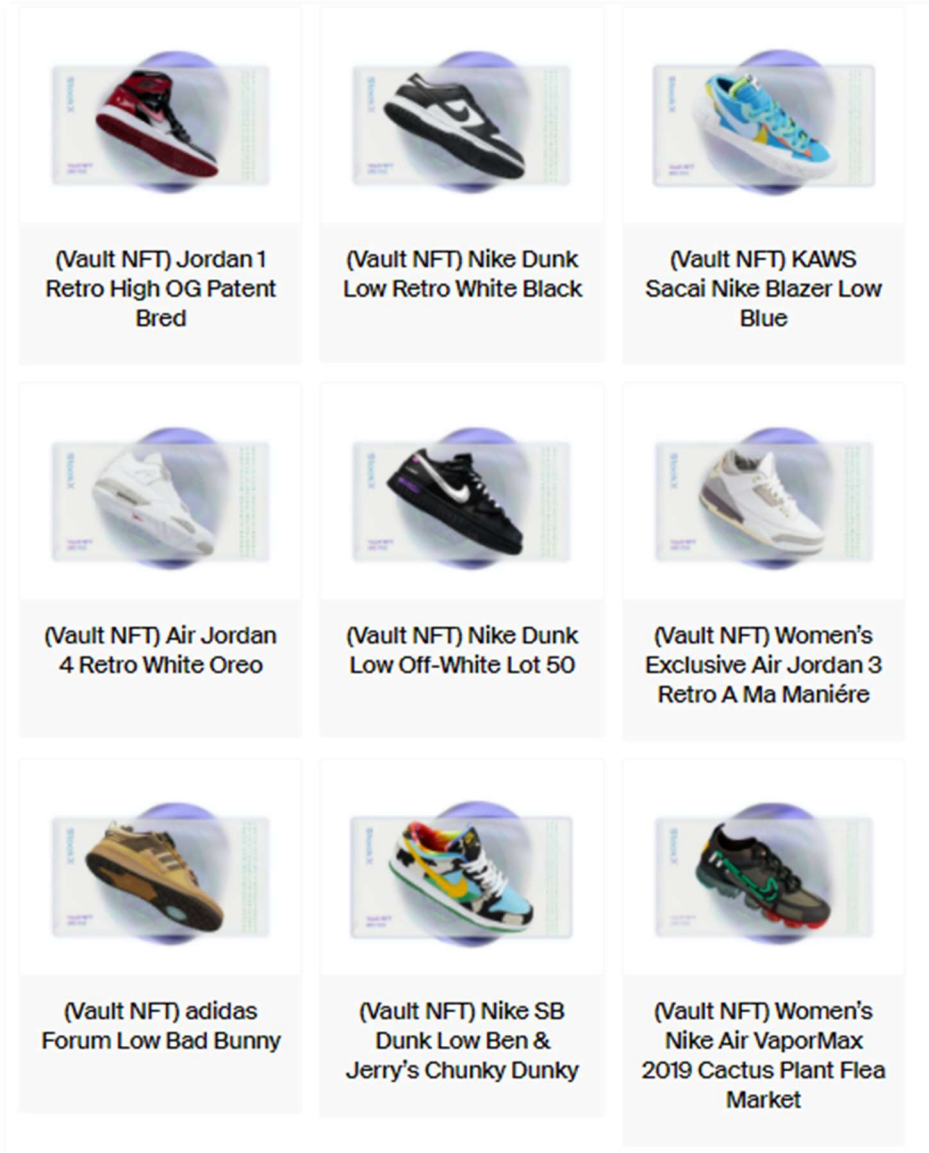
At some point on or around April 25, 2022, StockX removed this language, replacing it with statements that attempt to align with its defensive theme:

Introducing Vault NFTs on StockX, new digital tokens providing unprecedented access and utility for our customers. Each Vault NFT is tied to a physical product (as depicted on the NFT), which is stored in our brand new, climate-controlled, high-security vault.



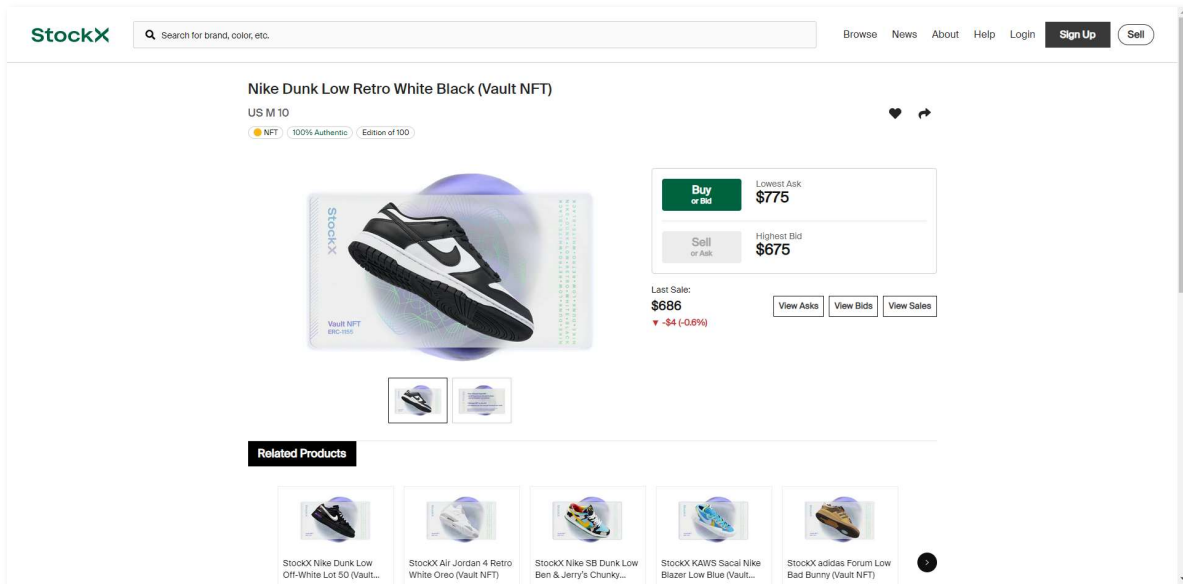
74. None of StockX’s trivial, post-hoc changes have resolved its ongoing infringement and dilution of Nike’s trademarks, and what StockX has opted *not* to change speaks volumes: to date, StockX has not removed or in any way modified the prominent use and display of Nike’s marks from the infringing Nike-branded Vault NFTs.

75. As of February 2, 2022, StockX’s Vault NFT collection comprised nine NFTs, as shown below. Eight of the nine prominently display Nike’s marks and are associated with Nike products. Upon information and belief, StockX almost exclusively used Nike’s marks to launch its Vault NFTs because it knew that doing so would garner attention, drive sales, and confuse consumers into believing that Nike collaborated with StockX on the Vault NFTs.



76. To date, upon information and belief, StockX has sold 558 individual Nike-branded Vault NFTs. Some of the infringing Nike-branded Vault NFTs are editions of 1, others are editions of 100, and some are as many as editions of 250. Upon information and belief, StockX has also minted—but not yet sold—at least another 2,000 infringing Nike-branded Vault NFTs purportedly linked to Nike’s Air Jordan 11 Retro Cool Grey shoes. Given that StockX is not an authorized Nike retailer, to the extent all corresponding physical Nike shoes exist at StockX’s “vault” facility, it is not clear where or how StockX acquired that many pairs of “100% Authentic” Nike shoes.

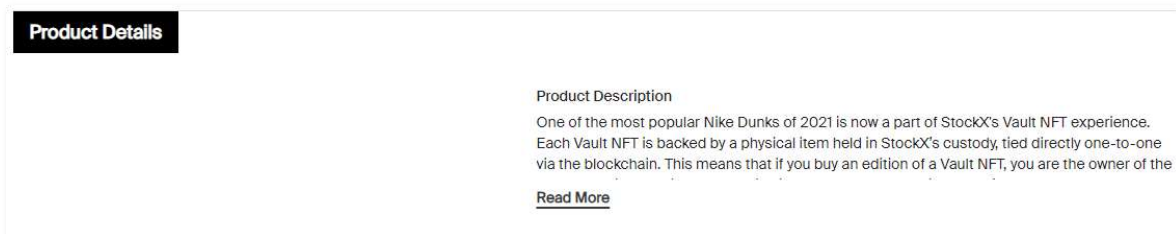
77. On the StockX product pages for its Vault NFTs, as shown below as of the date Nike filed its action, StockX prominently displayed Nike’s word marks in large, bold text at the top of the page, and couples Nike’s marks with its own “Vault NFT” designation in parentheses in the same large, bold text.



78. StockX also touted each Vault NFT as “100% Authentic,” which, upon information and belief, is intended to explicitly mislead consumers that Nike has authorized, approved, sponsored, and/or endorsed StockX’s Vault NFTs.



79. Further down the StockX product page for each Vault NFT as of the date Nike filed this action, StockX provided “Product Details,” which included a “Product Description,” that also uses Nike’s marks. For example, StockX’s description for the Nike Dunk Low Retro White Black (Vault NFT) opens with: “One of the most popular Nike Dunks of 2021 is now a part of StockX’s Vault NFT experience.”



If a consumer clicks on the “Read More” button, additional text appears, including “The Fine Print,” which states: “If the physical item associated with this Vault NFT is redeemed by the owner, it is removed from the StockX Vault and shipped to the owner. StockX will then remove the Vault

NFT from the owner's Portfolio and from circulation (*i.e.*, 'burn' the Vault NFT)."

Product Details

Product Description

One of the most popular Nike Dunks of 2021 is now a part of StockX's Vault NFT experience. Each Vault NFT is backed by a physical item held in StockX's custody, tied directly one-to-one via the blockchain. This means that if you buy an edition of a Vault NFT, you are the owner of the corresponding physical good which is secured and stored in StockX's Vault. As an NFT owner, you may be granted exclusive access to StockX benefits, promotions, experiences, and rewards.

The Nike Dunk Low Retro White Black is constructed of white leather with black leather overlays and Swooshes. Classic Nike branding is featured on the nylon tongue, nodding to traditional Dunk design elements. A white midsole and black outsole completes the design.

The Nike Dunk Low Retro White Black released in January of 2021 and retailed for \$100. To see this NFT on the blockchain, [click here](#). You can learn more about NFTs on StockX [here](#).

The Fine Print:

- If the physical item associated with this Vault NFT is redeemed by the owner, it is removed from the StockX Vault and shipped to the owner. StockX will then remove the Vault NFT from the owner's Portfolio and from circulation (*i.e.*, "burn" the Vault NFT).

[Read Less](#)

80. As shown above, each of the eight Nike-branded Vault NFT's is comprised of Nike marks, including the only prominent eye-catching feature, a vivid image of a bespoke Nike shoe. To the extent that the Vault NFT is merely supposed to function as a "digital receipt" for a physical Nike shoe, there is no legitimate reason for StockX to prominently feature Nike's trademarks on the Vault NFT and the StockX product page. Indeed, when a consumer purchases Nike shoes from the StockX marketplace, the consumer receives a paper receipt from StockX in the package. Unlike a Vault NFT, upon information and belief, this paper receipt prominently uses StockX's *own* mark and only uses the Nike name in connection with the purchased shoe, yet somehow still manages to function as a receipt for that Nike shoe:



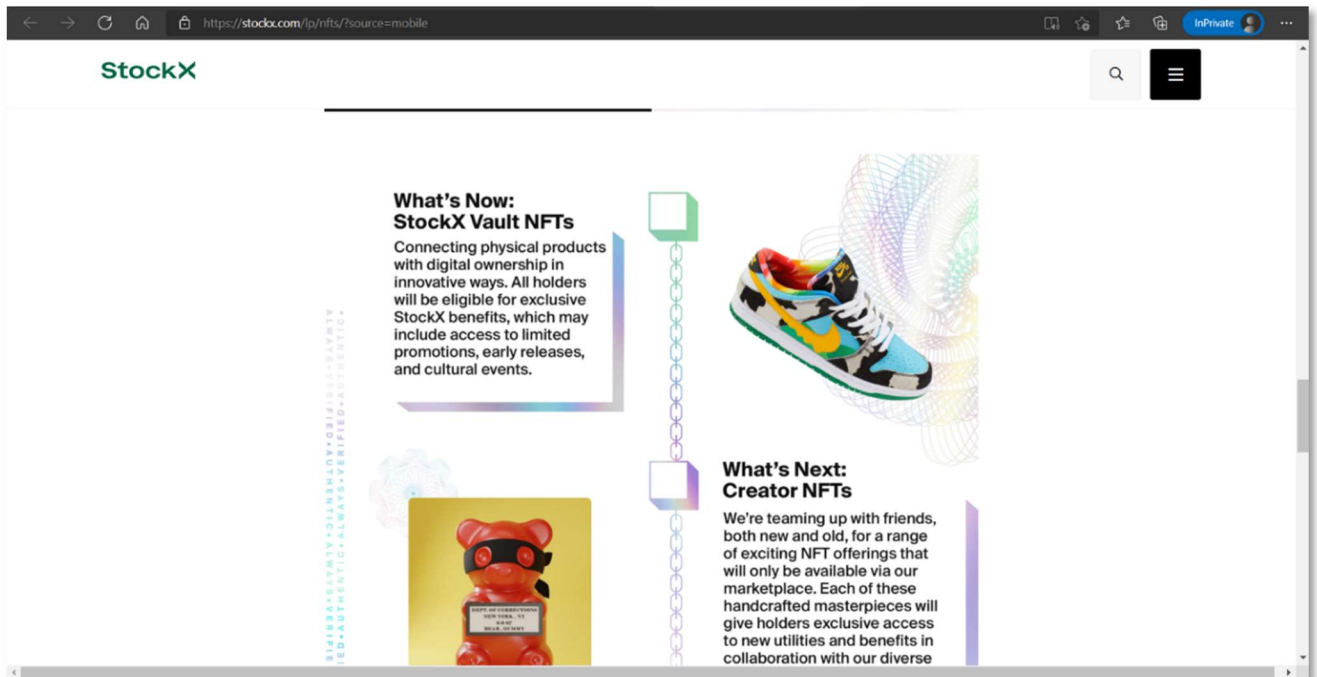
81. In addition to the vivid image of the Nike shoe each Vault NFT purports to represent, the StockX product page for each Vault NFT, as of the date Nike filed this action, also displayed a second image, the “back” of the Vault NFT, as shown below:

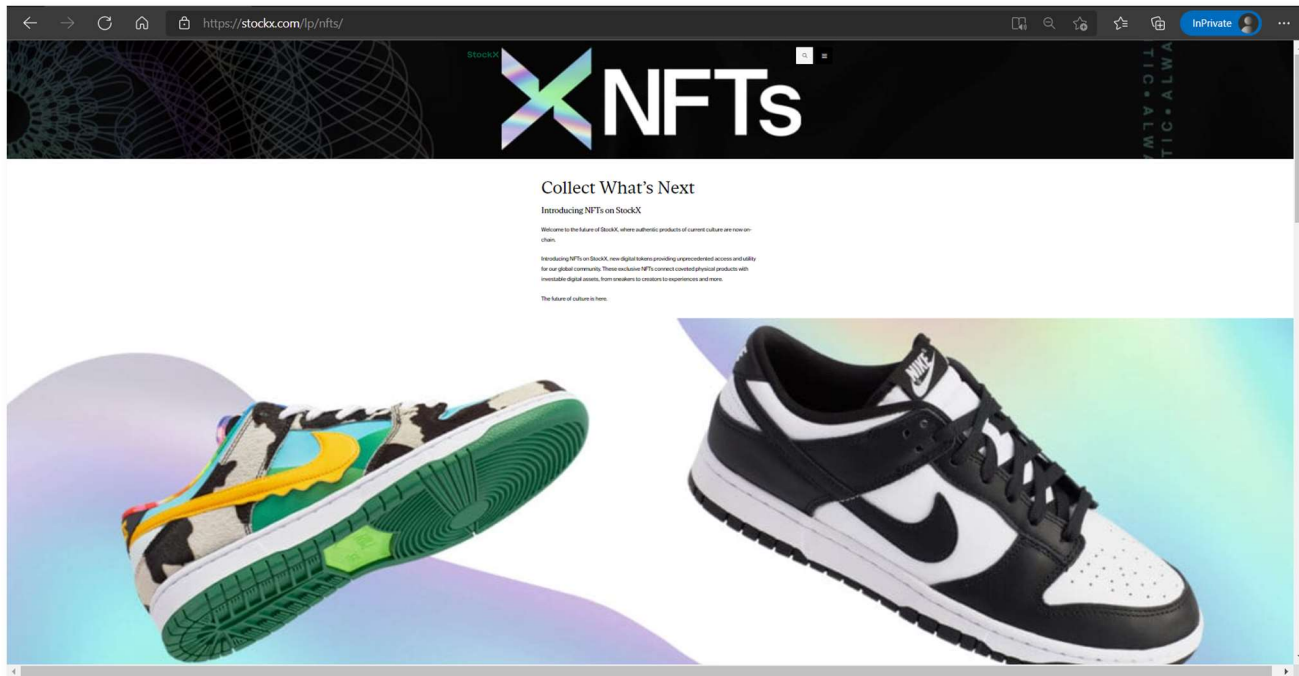


82. As of February 3, 2022, StockX stated, in large font, “How It Works,” with four bolded bullet points explaining, in simple terms, what users can do with a Vault NFT. Below the

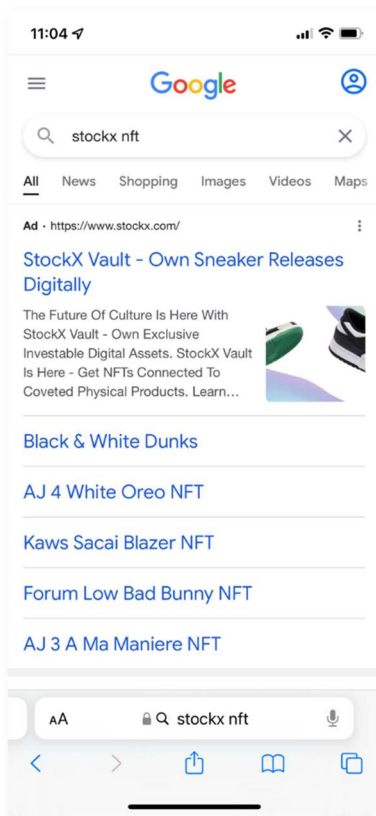
four bullet points, in comically and intentionally small, difficult-to-read font, StockX also stated: “The purpose of the NFT is solely to track the ownership of and transactions in connection with the associated product. The NFT does not independently authenticate the associated product, nor is it affiliated or associated with, sponsored by, or officially connected to Nike or any of its subsidiaries or affiliates. For more information on official Nike products, please visit Nike.com.” Putting aside the ineffectiveness of this tiny disclaimer and the additional small print disclaimers added since this action was filed the “does not independently authenticate” language appears to conflict with the “100% Authentic” on the product page.

83. Upon information and belief, recognizing the tremendous value of the Nike brand to consumers, StockX is also using Nike’s trademarks and images of Nike’s products to promote its Vault NFTs on the StockX Website, StockX App, and on StockX’s social media accounts. For example, as of the date Nike filed this action, StockX promoted its Vault NFTs on its website with the following images incorporating Nike’s products and trademarks:

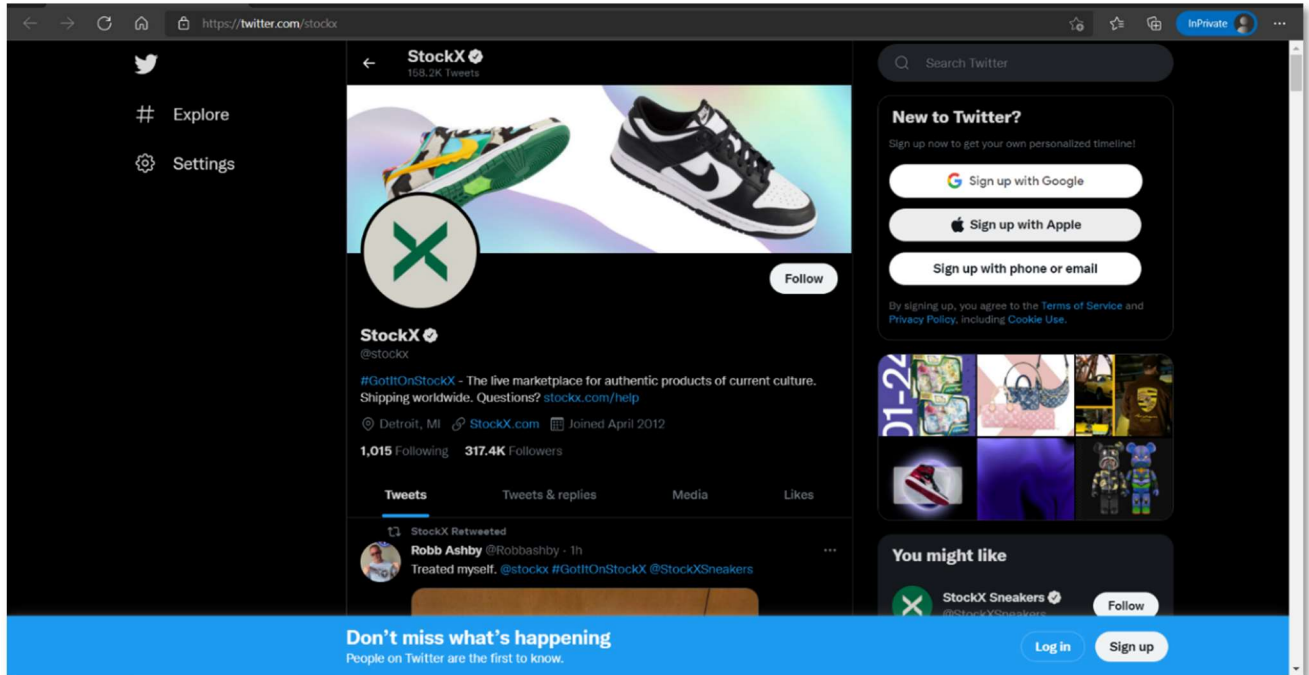




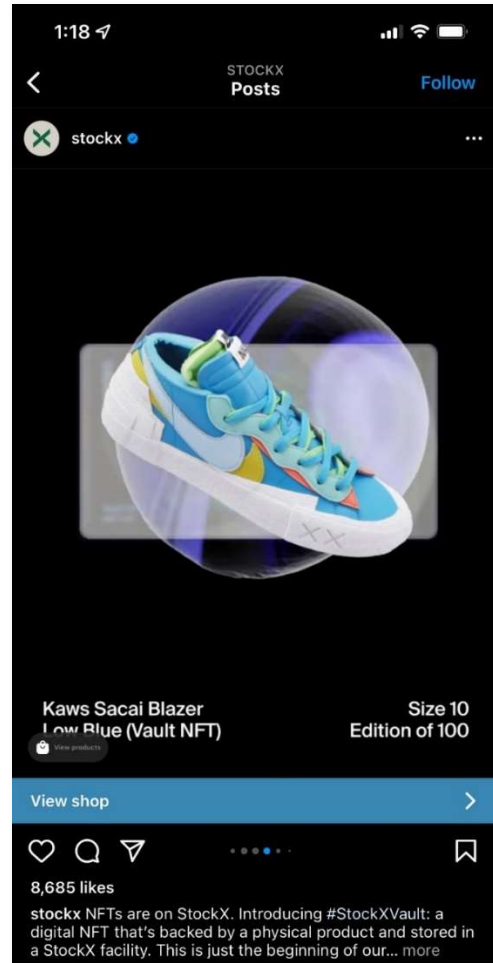
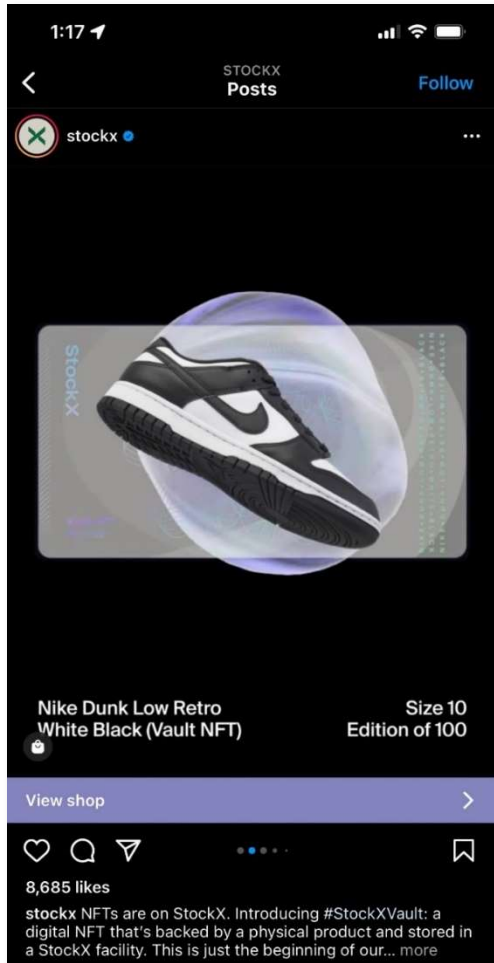
84. StockX was also using Nike's trademarks and images of Nike's products on paid Google Ads to promote its Vault NFTs:



85. As of the present date, StockX's Twitter account displayed a banner image depicting two Nike shoes, which appears to be the same image used by StockX to promote the Vault NFTs on its website, as shown above:



86. On January 18, 2022, to promote the launch of its Vault NFTs, StockX posted to its Instagram account a series of images depicting Nike's trademarks and products, including the two shown below:



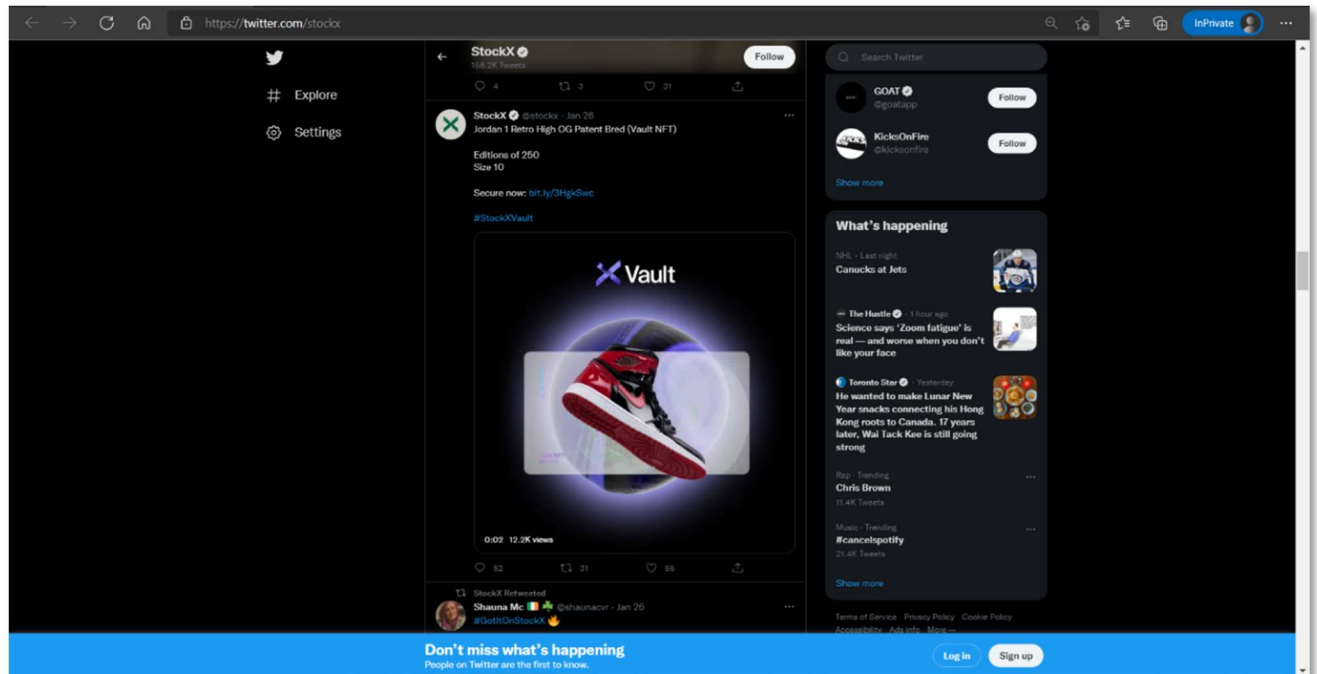
87. The full caption of the above Instagram post states: “NFTs are on StockX. Introducing #StockXVault: a digital NFT that’s backed by a physical product and stored in a StockX facility. This is just the beginning of our web3 future. Available for trading now. Links to purchase in Product Tags and Stories. Welcome to the future of culture. Learn more at the link in bio.”

88. On January 26, 2022, StockX again promoted its Vault NFTs by posting to its Instagram account a pair of images depicting Nike’s trademarks and product, including the one shown below:



89. The full caption of the above Instagram post states: “A new #StockXVault arrival: The Jordan 1 High Patent Bred. Limited to 250 editions, each size 10, and available for trading immediately. Links to purchase in the Product Tags and Stories. Tap fast to add to your portfolio.”

90. Also on January 26, 2022, StockX tweeted a promotional video for the Jordan 1 Retro High OG Patent Bred Vault NFT:



91. As shown above, as of the date Nike filed this action, StockX was using Nike's trademarks to market, promote, and attract potential purchasers to its Vault NFTs. StockX's use of Nike's marks is, upon information and belief, intentionally deceiving consumers into believing that Nike sponsors or approves of the Vault NFTs.

92. StockX's Vault NFTs are not Nike products. There is no collaboration between Nike and StockX, Nike did not provide a license to StockX to use its trademarks in connection with the Vault NFTs, Nike did not create or inspect the Vault NFTs or authorize the confusing and misleading Vault NFT Terms, and Nike did not authorize StockX to make, promote, advertise, market, or sell the Vault NFTs.

93. While StockX represents that the Vault NFTs are "backed by" and confer title to genuine Nike products, StockX has marketed them as bundled with additional digital goods, services, and unspecified benefits in such a manner that the Vault NFTs constitute new,

unauthorized products created, marketed, offered for sale, and sold by StockX, exclusively on the StockX Website and StockX App.

94. Despite StockX's prominent use of Nike's trademarks and products in connection with the Vault NFTs, Nike has no control over the quality of the Vault NFTs whatsoever. Nike has no say in how many Vault NFTs bearing its trademarks are released, where the Vault NFTs are released and traded, when the Vault NFTs are released, how the Vault NFTs are released, traded, or redeemed, and at what price the Vault NFTs are sold and traded.

95. As noted in Paragraphs 63-65 above, the Vault NFTs are presently trading for inflated prices that are multiples higher than both the original retail price of the shoes and the current resale price on the secondary market.

96. The Vault NFTs' inflated prices and murky terms of purchase and ownership have already led to public criticism of StockX and allegations that the Vault NFTs are a scam. For example, on January 19, 2022, Input Magazine published an article on its website entitled "StockX's 'sneaker' NFTs are kind of a scam hidden in plain sight." The article's author, Ian Servantes, highlights the Vault NFT Terms that suggest the benefits of Vault NFT ownership may be entirely illusory:

Owner's [sic] of StockX's limited series of sneaker NFTs will be given exclusive access to the company's releases, promotions, and events, according to the announcement page. But if you dig further into the term's [sic] of service, as Sole Retriever did, you'll find that StockX has been given license to redeem your NFT for an 'experiential component' and even take away your ownership of the NFT as a result of the transaction.

The initial offering for StockX's NFTs have already sold out, so let's say you decide to engage in a secondary purchase for an NFT. You purchase, say, the NFT for the Nike x Ben & Jerry's "Chunky Dunky," which has an ask of \$100,000 and a highest bid of \$3,000. Now that it's yours you don't get the actual sneaker, and at some

point StockX can come in say, Here's access to an early sale or a discount, and by the way, that NFT is no longer yours.

Even in a field as fishy NFTs, StockX's proposition smells like one of the most obvious gifts you're likely to see. In a bid to stand out as different as NFTs, StockX has instead made tokens that make it even more clear that you're the mark.

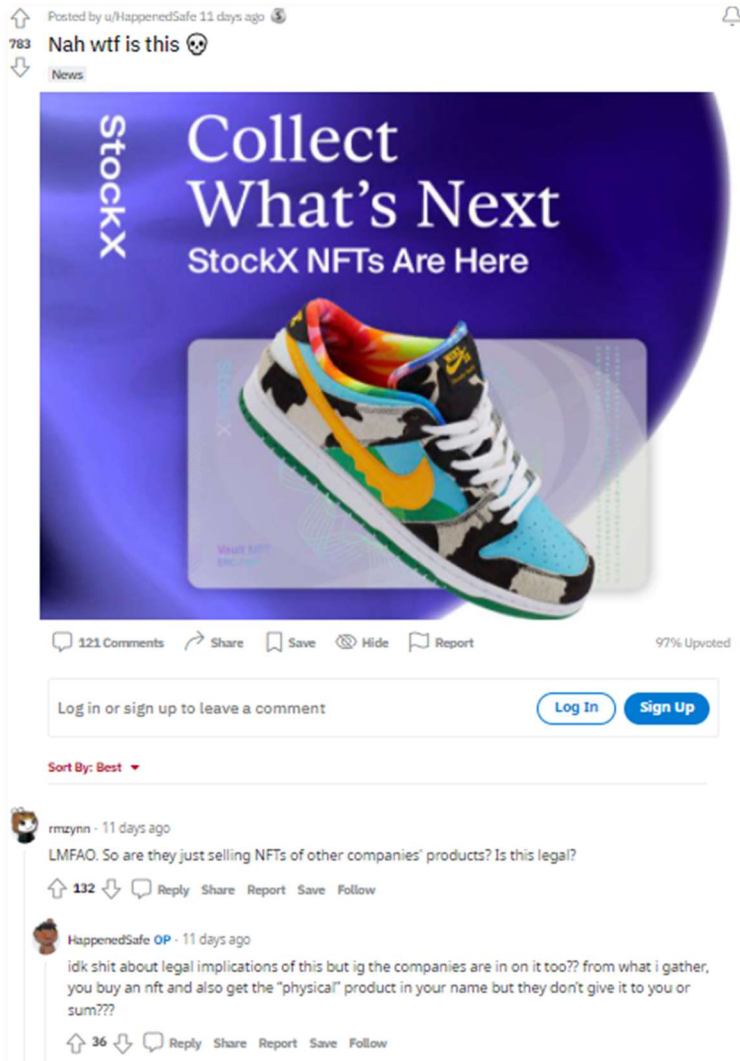
See <https://www.inputmag.com/style/stockx-vault-nfts-sneakers-shoes-nike-off-white-dunk-adidas-bad-bunny>.

97. The above impression of StockX's Vault NFTs demonstrates that they have been received by potential purchasers with suspicion and doubts about the integrity and trustworthiness of StockX's NFT business model. This example also shows that StockX's prominent use of Nike's trademarks and products in connection with the Vault NFTs has already generated negative associations with Nike's trademarks and products that harm Nike's business reputation and the goodwill associated with its trademarks, in which Nike has invested immense resources to develop over the past five decades.

98. Upon information and belief, StockX has attempted to capitalize on Nike's valuable reputation and goodwill by using Nike's Asserted Marks and/or confusingly similar marks in a manner that is likely to cause consumers to believe that StockX's Vault NFTs are associated with Nike, when they are not. Indeed, as noted in Paragraph 80 above, if StockX merely intended to use NFTs as digital receipts as it claims, there would be no need to make such extensive and prominent use of Nike's trademarks. Upon information and belief, this prominent use of Nike's marks was intended to free ride on Nike's immense goodwill and satisfy consumer desire to own Nike-branded virtual goods, which owners can display in their portfolios.

99. StockX's use of Nike's trademarks and images of Nike's products to promote its Vault NFTs has already created confusion in the marketplace as to the Vault NFTs' source and

whether Nike is in any way involved or associated with StockX's Vault NFTs. For example, immediately after StockX announced the Vault NFTs' release, on January 18, 2022, users on social media questioned the propriety of StockX's Vault NFTs and whether Nike is "in on it too," while others "feel safe assuming Nike gets a cut of the fees that StockX takes from each transaction."



Replying to @russbengtson @jay_shoefanatic and @airmaxtrin

Yeah I'd feel safe assuming Nike gets a cut of the fees that StockX takes from each transaction.

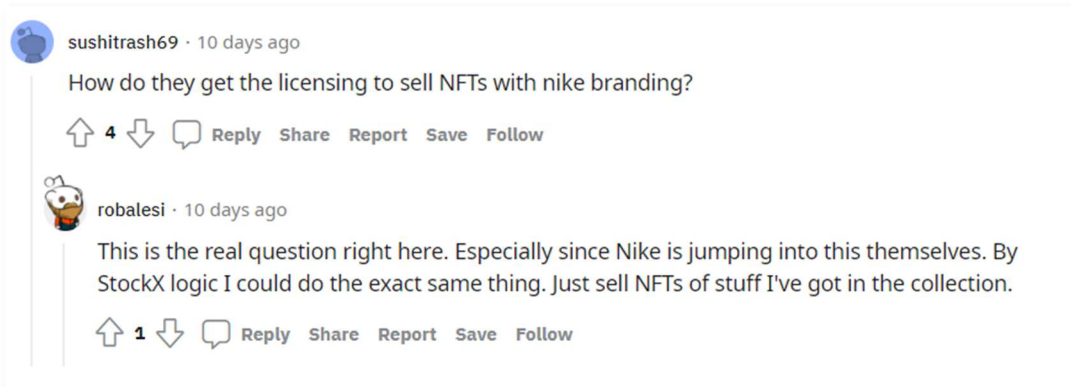
lol @ "save closet space & shipping cost"

2:36 PM · Jan 18, 2022 · Twitter Web App

100. Consumer confusion as to whether Nike is associated with StockX's Vault NFTs was also immediately evident on Twitter, where, on January 18, 2022, a user replied to a StockX tweet promoting the launch of its Vault NFTs, asking whether the Vault NFTS are "endorsed/approved by Nike/Adidas etc?":



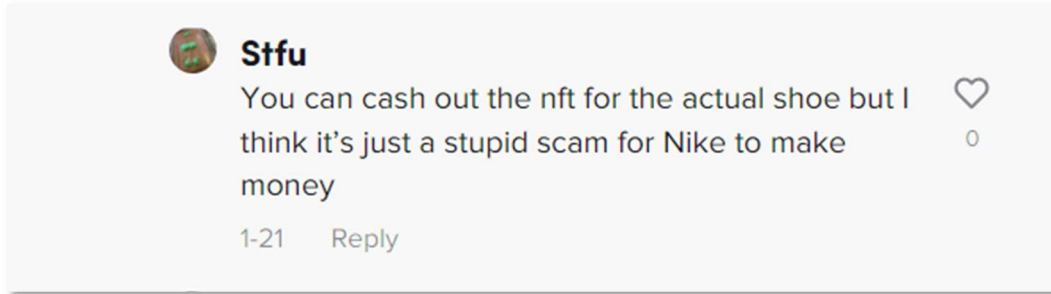
101. The following day, January 19, 2022, Reddit users on another thread under the r/Sneakers subreddit wondered whether Nike had granted StockX a license to use Nike's "branding":



102. On that same day, January 19, 2022, and same thread under the r/Sneakers subreddit, another confused user expressed their (incorrect) belief that “Nike gets a small commission every time an NFT is purchased,” and that StockX’s Vault NFTs are “a way for Nike to get a piece of the huge pie of the resale market” while not bringing any added benefit to the buyer:



103. Additionally, on January 21, 2022, in response to a video posted earlier that same day discussing StockX’s Vault NFTs, one confused TikTok user commented: “You can just cash out of the nft for the actual shoe but I think it’s just a stupid scam for Nike to make money.”



104. Since the filing of this action, confusion has continued. In fact, once Nike began sales of its own Nike-branded NFTs, the public has conflated the parties' offerings. For example, in an article republished multiple times since May 2, 2022 titled "Nike Takes A Major Step Into The Metaverse," the author incorrectly reports that the Nike/RTFKT Cryptokicks™ "makes its debut on StockX":



The article goes on to report:

StockX's The Vault fuses a digital token, which its users can trade with one another, to secure actual, physical shoes. (StockX)

Now, users of the platform can buy NFTs supported by Nike, a sportswear company many consider the gold-standard of physical sneakers in the real world.

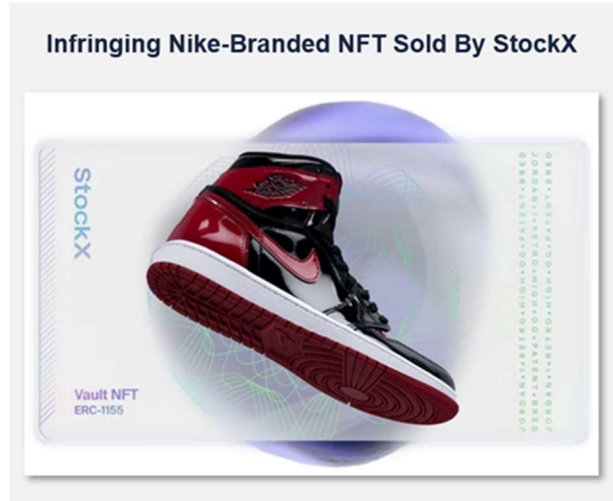
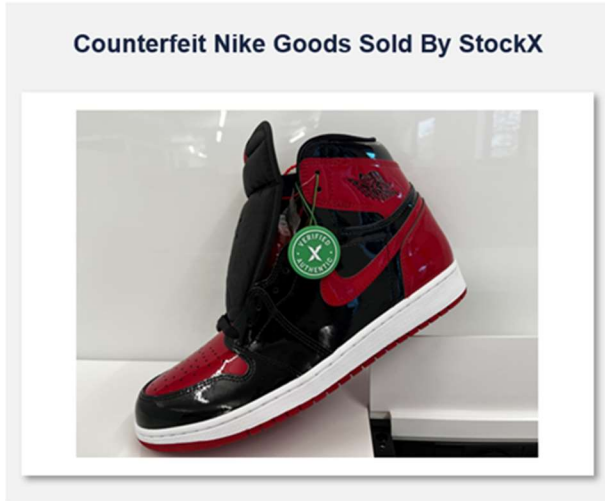
See <https://www.zenger.news/2022/05/02/nike-takes-a-major-step-into-the-metaverse/>.

105. But Nike's Dunk Genesis Cryptokicks™ NFTs did not debut on StockX, and users of StockX's platform cannot buy NFTs supported by Nike. This was precisely the sort of confusion that Nike feared would ensue when it filed this action and began releasing genuine NFTs.

StockX's Counterfeit Sales and Claims of Authenticity

106. In addition to the infringing and dilutive conduct related to the Vault NFTs, Nike's continuing investigation into StockX's conduct has also revealed that StockX has been and is currently dealing in counterfeit Nike goods.

107. Between December 2021 and January 2022, Nike obtained from StockX's platform at least four pairs of counterfeit Nike shoes. Since the filing of this action, Nike has confirmed that these four pairs of shoes are, in fact, counterfeit. As noted above, one of the confirmed pairs of counterfeit Nike shoes is a counterfeit Air Jordan 1 Retro High OG in the Black/Varsity Red-White colorway—the exact same style that StockX has purportedly linked to one of its eight infringing Nike-branded Vault NFTs:



108. In fact, as of the current date, StockX has sold 518 infringing Nike-branded Vault NFTs that are purportedly linked to the same Air Jordan 1 Retro High OG in the Black/Varsity Red-White colorway, making it StockX’s top-selling NFT by total volume sold:

StockX Search for brand, color, etc. Browse News About Help MyAccount Sell

NFTs

Home / NFTs Sort By: Total Sold

- SNEAKERS
- APPAREL
- ELECTRONICS
- TRADING CARDS
- COLLECTIBLES
- ACCESSORIES
- NFTS
- BELOW RETAIL
- PRICES
 - Under \$500
 - \$500 - \$1500
 - \$1500 - \$3000
 - \$3000 - \$5000
 - \$5000 - \$10000
 - \$10000 - \$15000
 - \$15000 +

Item	Lowest Ask	Sold
StockX Vault NFT Jordan 1 Retro High OG Patent Bred ...	\$339	518 sold
StockX Vault NFT adidas Yeezy Boost 350 V2 Beluga...	\$290	488 sold
StockX Vault NFT Supreme MGI/100 RX-78-2 GUNDAM...	\$154	225 sold
StockX Vault NFT Nike Dunk Low Retro White Black - US...	\$390	218 sold
StockX Vault NFT Air Jordan 4 Retro White Oreo - US M L...	\$478	214 sold
StockX Vault NFT KAWS Sacai Nike Blazer Low Blue ...	\$229	198 sold
StockX Vault NFT Supreme x The Crow Kubrick Figure...	\$70	196 sold
StockX Vault NFT Pokémon TCG 25th Anniversary...	\$480	149 sold

109. Nike’s discovery of StockX’s recent dealing in counterfeit Nike goods is consistent with numerous publicly available consumer complaints that Nike shoes guaranteed as “100% Verified Authentic” by StockX turned out to be counterfeit, including complaints directed to

StockX on its social media channels. Nike’s investigation remains ongoing and, upon information and belief, StockX is selling and will continue to sell counterfeit Nike goods to unsuspecting consumers.

110. StockX claims on the StockX Website that every item StockX sells on its e-commerce platform—including those items purportedly associated with the Vault NFTs—has been independently verified by StockX as “100% Verified Authentic.” The confirmed purchase of counterfeit Nike goods on StockX’s platform—including the same style purportedly associated with at least one of the infringing Nike-branded Vault NFTs—directly undermines StockX’s “100% Verified Authentic” claims and its claims about the “proprietary multi-step verification process” it employs to authenticate goods and renders these statements false and/or misleading.

111. StockX’s “100% Verified Authentic” claims and its claims about the “proprietary multi-step verification process” it employs to authenticate goods sold on its e-commerce platform are material because StockX is misrepresenting an inherent quality or characteristic of the Nike goods sold on its platform, *i.e.*, that they are not counterfeit and have been authenticated as genuine. Moreover, StockX’s claims are likely to influence consumer purchasing decisions because consumers shopping for real Nike goods are more likely to purchase from StockX than other channels based on StockX’s prominent claims about the authenticity of the Nike goods for sale on its platform and based on its statements that its authentication process is proprietary, that StockX authenticators are “better equipped than anyone” to confirm the authenticity of a product.

112. On information and belief, an unknown number of consumers have been deceived by and purchased counterfeit Nike goods or Nike-branded Vault NFTs based on StockX’s false and/or misleading statements about the authenticity of the Nike goods for sale on its platform.

113. On information and belief, StockX knows that its false and/or misleading statements about the authenticity of the Nike goods for sale on its platform deceives consumers. Nevertheless, StockX continues to engage in such improper and unlawful business practices to attract consumers to its platform and induce consumers to purchase supposedly genuine Nike goods and purchase and trade the infringing Nike-branded Vault NFTs.

114. The continued sale of counterfeit Nike goods on StockX's platform and StockX's false and/or misleading claims about its authentication process and verified authenticity have caused and are causing Nike injury as a result of, *inter alia*, harm to reputation, diverted sales, consumer confusion, dilution, and tarnishment of its valuable trademarks.

115. By virtue of the acts complained of herein, StockX has created a likelihood of injury to Nike's business reputation and goodwill, caused a likelihood of consumer confusion, mistake, and deception as to the source of origin or relationship of Nike's products and StockX's Vault NFTs, and has otherwise competed unfairly by unlawfully dealing in counterfeit Nike goods, making false and/or misleading statements, and trading on and using Nike's Asserted Marks without Nike's permission.

116. Unless stopped, StockX's Vault NFTs, StockX's use of Nike's Asserted Marks, StockX's dealing in counterfeit Nike goods, and StockX's false and/or misleading statements will continue to confuse consumers in the marketplace and dilute Nike's famous marks by blurring and tarnishment.

117. As noted above in Paragraph 6 above, StockX has already announced its plans to expand its Vault NFT business, which will likely include additional uses of Nike's famous trademarks and products. In addition to StockX's announcement referenced above, StockX confirmed its plans to release additional Vault NFTs on Twitter:



118. Indeed, since this action was filed, Nike discovered that StockX has also minted—but not yet sold—at least another 2,000 infringing Nike-branded Vault NFTs purportedly linked to Nike’s Air Jordan 11 Retro Cool Grey shoes.

119. StockX’s acts complained of herein are willful and deliberate.

120. StockX’s acts complained of herein have caused damage to Nike in an amount to be determined at trial, and such damages will continue to increase unless StockX is preliminarily and permanently enjoined from their wrongful acts.

121. StockX’s acts complained of herein have caused Nike to suffer irreparable injury to its business. Nike will suffer substantial loss of goodwill and reputation unless and until StockX is permanently enjoined from the wrongful acts complained of herein.

FIRST CAUSE OF ACTION
TRADEMARK INFRINGEMENT
15 U.S.C. § 1114

122. Nike repeats and realleges each and every allegation in the foregoing Paragraphs 1 to 121 as if fully set forth herein.

123. Nike’s Asserted Marks are on the Principal Register of the United States Patent and Trademark Office.

124. Through extensive and continuous use, Nike's Asserted Marks and the goodwill of the businesses associated with them in the United States and throughout the world are of significant value, are highly distinctive and arbitrary or fanciful, and have become universally associated in the public mind with Nike, its products and services, and the very highest quality and reputation.

125. StockX has knowingly used and continues to use in commerce, without Nike's permission or authorization, Nike's Asserted Marks, and/or confusingly similar marks, in connection with the sale, distribution, and advertising of its Vault NFTs.

126. StockX's conduct is intended to exploit the goodwill and reputation associated with Nike's Asserted Marks.

127. StockX's use of Nike's Asserted Marks is likely to confuse, mislead, or deceive potential consumers, purchasers, and the general purchasing public as to the source, origin, sponsorship, or affiliation of the Vault NFTs with Nike, and is likely to cause such people to erroneously believe that StockX's Vault NFTs have been authorized, sponsored, approved, endorsed, or licensed by Nike or that StockX is in some way affiliated with Nike.

128. StockX's unauthorized use of Nike's Asserted Marks constitutes trademark infringement of Nike's federally registered trademarks, which has caused damage to Nike and the substantial business and good will embodied in Nike's trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

129. As a direct and proximate result of StockX's wrongful acts, Nike has suffered, continues to suffer, and/or is likely to suffer damage to its trademarks, business reputation, and good will that money cannot compensate. Unless enjoined, StockX will continue to use Nike's Asserted Marks and/or confusingly similar marks and will cause irreparable damage to Nike,

Nike's Asserted Marks, and to the business and good will represented thereby, for which Nike has no adequate remedy at law.

130. Nike is further entitled to recover from StockX the actual damages Nike has sustained, is sustaining, and/or is likely to sustain as a result of StockX's wrongful acts.

131. Upon information and belief, StockX has obtained gains, profits, and advantages as a result of its wrongful acts and will continue to do so in an amount yet to be determined.

132. StockX's use of Nike's Asserted Marks and/or confusingly similar marks has been intentional and willful. StockX's bad faith is evidenced, in part, by the egregious and prominent use of Nike's Asserted Marks in connection with the sale and promotion of the Vault NFTs, and the extensive nature of the infringement. Because of the willful nature of StockX's wrongful acts, Nike is entitled to an award of treble damages and increased profits under 15 U.S.C. § 1117.

133. Because this is an exceptional case, Nike is also entitled to recover its costs of suit and its attorneys' fees pursuant to 15 U.S.C. § 1117.

SECOND CAUSE OF ACTION
FALSE DESIGNATION OF ORIGIN / UNFAIR COMPETITION
15 U.S.C. § 1125(a)

134. Nike repeats and realleges each and every allegation in the foregoing Paragraphs 1 to 121 as if fully set forth herein.

135. StockX's unauthorized use of Nike's Asserted Marks and/or confusingly similar marks constitutes a false designation of origin that is likely to cause consumer confusion, mistake, or deception as to the origin, sponsorship, or approval of StockX's Vault NFTs by creating the false and/or misleading impression StockX's Vault NFTs are produced by, authorized by, or otherwise associated with Nike.

136. As a direct and proximate result of StockX's wrongful acts, Nike has suffered, continues to suffer, and/or is likely to suffer damage to its trademarks, business reputation, and good will that money cannot compensate. Unless enjoined, StockX will continue to use Nike's Asserted Marks and/or confusingly similar marks and will cause irreparable damage to Nike, Nike's Asserted Marks, and to the business and good will represented thereby, for which Nike has no adequate remedy at law.

137. Nike is further entitled to recover from StockX the actual damages Nike has sustained, is sustaining, and/or is likely to sustain as a result of StockX's wrongful acts.

138. StockX's use of Nike's Asserted Marks and/or confusingly similar marks has been intentional and willful. StockX's bad faith is evidenced, in part, by the egregious and prominent use of Nike's Asserted Marks in connection with the sale and promotion of the Vault NFTs, and the extensive nature of the infringement. Because of the willful nature of StockX's wrongful acts, Nike is entitled to an award of treble damages and increased profits under 15 U.S.C. § 1117.

139. Because this is an exceptional case, Nike is also entitled to recover its costs of suit and its attorneys' fees pursuant to 15 U.S.C. § 1117.

THIRD CAUSE OF ACTION
TRADEMARK DILUTION
15 U.S.C. § 1125(c)

140. Nike repeats and realleges each and every allegation in the foregoing Paragraphs 1 to 121 as if fully set forth herein.

141. As a result of the duration, extent, and geographical reach of advertising and publicity, the amount, volume, and geographical extent of Nike's sales and trading areas, their channels of trade, their degree of recognition, and registration, Nike's Asserted Marks have

become distinctive and “famous” within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

142. Nike’s Asserted Marks have become distinctive and famous prior to StockX’s acts as alleged herein.

143. StockX’s unauthorized and wrongful use of Nike’s Asserted Marks in commerce has diluted and will, unless enjoined, continue to dilute, and is likely to dilute the distinctive quality of Nike’s Asserted Marks, in violation of Nike’s rights under 15 U.S.C. § 1125(c)

144. StockX’s unauthorized and wrongful use of Nike’s Asserted Marks in commerce has tarnished and will, unless enjoined, continue to tarnish, and is likely to tarnish the fame of Nike’s Asserted Marks by undermining and damaging the valuable good will associated therewith, in violation of Nike’s rights under 15 U.S.C. § 1125(c).

145. StockX’s acts as alleged herein are intentional and willful in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and have already caused Nike irreparable damage and will, unless enjoined, continue to so damage Nike, which has no adequate remedy at law.

146. Nike is further entitled to recover from StockX the actual damages Nike has sustained, is sustaining, and/or is likely to sustain as a result of StockX’s wrongful acts.

147. Upon information and belief, StockX has obtained gains, profits, and advantages as a result of its wrongful acts and will continue to do so in an amount yet to be determined.

148. StockX’s use of Nike’s Asserted Marks and/or confusingly similar marks has been intentional and willful. StockX’s bad faith is evidenced, in part, by the egregious and prominent use of Nike’s Asserted Marks in connection with the sale and promotion of the Vault NFTs, and the extensive nature of the infringement. Because of the willful nature of StockX’s wrongful acts, Nike is entitled to an award of treble damages and increased profits under 15 U.S.C. § 1117.

149. Because this is an exceptional case, Nike is also entitled to recover its costs of suit and its attorneys' fees pursuant to 15 U.S.C. § 1117.

FOURTH CAUSE OF ACTION
INJURY TO BUSINESS REPUTATION AND DILUTION
NEW YORK GENERAL BUSINESS LAW § 360-1

150. Nike repeats and realleges each and every allegation in the foregoing Paragraphs 1 to 121 as if fully set forth herein.

151. Nike, on behalf of itself and the general consuming public, seek recovery from StockX for violation of New York's Anti-Dilution Statute, N.Y. Gen. Bus. Law § 360-1, *et seq.*

152. Nike's Asserted Marks are commercially and conceptually strong trademarks, which have become distinctive and acquired a secondary meaning capable of dilution.

153. Nike's Asserted Marks have become distinctive and acquired a secondary meaning capable of dilution prior to StockX's acts as alleged herein.

154. StockX's unauthorized and wrongful use of Nike's Asserted Marks has diluted and will, unless enjoined, continue to dilute, and is likely to dilute the distinctive quality of Nike's Asserted Marks, thereby diminishing the capacity of Nike's Asserted Marks to function as unique product identifiers for Nike's goods and services.

155. StockX's unauthorized and wrongful use of Nike's Asserted Marks has tarnished and will, unless enjoined, continue to tarnish, and is likely to tarnish Nike's Asserted Marks by creating negative associations with Nike, its Asserted Marks, and the associated business reputation and good will.

156. StockX's acts as alleged herein are intentional and willful in violation of New York's Anti-Dilution Statute, N.Y. Gen. Bus. Law § 360-1, *et seq.*, and have already caused Nike

irreparable damage and will, unless enjoined, continue to so damage Nike, which has no adequate remedy at law.

FIFTH CAUSE OF ACTION
COMMON LAW TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION

157. Nike repeats and realleges each and every allegation in the foregoing Paragraphs 1 to 121 as if fully set forth herein.

158. Through its prior and continuous use of its Asserted Marks in commerce, Nike's Asserted Marks have become widely known, and Nike has been identified in the public mind as the manufacturer of the products to which the Nike Asserted Marks are applied.

159. Through its prior and continuous use of its Asserted Marks in commerce, Nike enjoys exclusive common law rights in the Asserted Marks.

160. StockX's use of Nike's Asserted Marks is without any permission, license or other authorization from Nike.

161. StockX, with knowledge and intentional disregard of Nike's rights, continues to advertise, promote, and sell Vault NFTs using Nike's Asserted Marks and/or confusingly similar marks. StockX's acts have caused, continue to cause, and/or are likely to cause confusion as to the source and/or sponsorship of the Vault NFTs.

162. StockX's acts as alleged herein constitute common law trademark infringement, and have already caused Nike irreparable damage and will, unless enjoined, continue to so damage Nike, which has no adequate remedy at law.

163. Upon information and belief, StockX committed the acts alleged herein knowingly, willfully, wantonly, oppressively, fraudulently, maliciously, and in conscious disregard of Nike's

rights, thereby entitling Nike to exemplary and punitive damages pursuant to the common law of the State of New York in an amount sufficient to punish, deter, and make an example of StockX.

SIXTH CAUSE OF ACTION
COUNTERFEITING
15 U.S.C. § 1114

164. Nike repeats and realleges each and every allegation in the foregoing Paragraphs 1 to 121 as if fully set forth herein

165. Nike's Asserted Marks are on the Principal Register of the United States Patent and Trademark Office.

166. Through extensive and continuous use, Nike's Asserted Marks and the goodwill of the businesses associated with them in the United States and throughout the world are of significant value, are highly distinctive and arbitrary or fanciful, and have become universally associated in the public mind with Nike, its products and services, and the very highest quality and reputation.

167. StockX is acquiring, offering for sale, selling and shipping directly to consumers shoes bearing counterfeits of the following Nike federally registered trademarks: Reg. No. 1,370,283 (AIR JORDAN word mark); Reg. No. 3,725,535 (Air Jordan & Wings Design mark); Reg. No. 3,627,820 (JUMPMAN word mark); Reg. No. 1,558,100 (JumpMan Design mark); Reg. No. 978,952 (NIKE word mark); Reg. No. 1,214,930 (NIKE word mark); Reg. No. 977,190 (Swoosh Design mark); Reg. No. 1,323,343 (Swoosh Design mark); and Reg. No. 1,325,938 (NIKE & Swoosh Design mark).

168. StockX's counterfeiting activities are likely to cause and actually are causing confusion, mistake, and deception among the general consuming public as to the quality of Nike's authentic shoes. StockX's unlawful acts are intended to reap the benefit of the immense goodwill that Nike has created in its goods and constitute counterfeiting of the following Nike federally

registered trademarks in violation of § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1): Reg. No. 1,370,283 (AIR JORDAN word mark); Reg. No. 3,725,535 (Air Jordan & Wings Design mark); Reg. No. 3,627,820 (JUMPMAN word mark); Reg. No. 1,558,100 (JumpMan Design mark); Reg. No. 978,952 (NIKE word mark); Reg. No. 1,214,930 (NIKE word mark); Reg. No. 977,190 (Swoosh Design mark); Reg. No. 1,323,343 (Swoosh Design mark); and Reg. No. 1,325,938 (NIKE & Swoosh Design mark).

169. Unless enjoined, Nike will continue to suffer immediate and irreparable injury and StockX will continue to deceive the public unless enjoined from its counterfeiting conduct. Nike has no adequate remedy at law.

170. Because StockX's conduct was willful, Nike is entitled to statutory damages of up to \$2 million per counterfeit mark per type of goods or services sold, offered for sale, or distributed, pursuant to 15 U.S.C. § 1117.

SEVENTH CAUSE OF ACTION
FALSE ADVERTISING
15 U.S.C. § 1125(a)(1)(B)

171. Nike repeats and realleges each and every allegation in the foregoing Paragraphs 1 to 121 as if fully set forth herein.

172. In its pervasive advertising and marketing, StockX explicitly claims and guarantees that every item it sells—including those items purportedly associated with the Vault NFTs—has been independently verified by StockX as “100% Verified Authentic” through its “proprietary” process.

173. In connection with the advertising activities, StockX is falsely and/or misleadingly claiming that all Nike products sold on StockX's platform are “100% Verified Authentic” genuine, non-counterfeit goods manufactured by Nike, when, in fact, StockX is selling to consumers

counterfeit Nike shoes. It is also claiming that its process for authenticating products is somehow “proprietary,” despite the fact that StockX is not the entity that designed, created, manufactured, packaged, or shipped in the first instance any genuine Nike goods. StockX is therefore misrepresenting the nature, characteristics, and qualities of its goods and services and is misleading consumers in the process.

174. Upon information and belief, StockX made these false and/or misleading representations in order to take advantage of Nike’s immense goodwill and to induce consumers to purchase Nike shoes on the StockX platform. Nike has an intense interest in stopping StockX from deceiving and misleading consumers into believing consumers can blindly trust that all of the Nike shoes offered by StockX are genuine when they are not. StockX’s false and/or misleading statements are causing immediate and irreparable injury to Nike, by injuring Nike’s reputation in the marketplace, diverting consumer purchases of genuine Nike goods, and will continue to damage Nike and deceive consumers unless enjoined by this Court.

175. StockX’s acts constitute false advertising and false representations in violation of 15 U.S.C. § 1125(a)(1)(B). Nike has no adequate remedy at law.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Nike hereby demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Nike respectfully prays for:

1. A judgment and order that StockX has willfully (A) infringed Nike’s Asserted Marks and engaged in counterfeiting in violation of 15 U.S.C. §1114, (B) used false designations of origin and made false and/or misleading statements in violation of 15 U.S.C § 1125(a), (C)

diluted at least the Nike Asserted Marks in violation of 15 U.S.C. § 1125(c), (D) injured Nike's business reputation and diluted at least Nike's Asserted Marks violation of New York's Anti-Dilution Statute, N.Y. Gen. Bus. Law § 360-1, *et seq.*, and (E) violated Nike's common law rights in Nike's Asserted Marks;

2. A judgment and order enjoining StockX and StockX's affiliates, officers, agents, employees, attorneys, and all other persons acting in concert with StockX, during the pendency of this action and permanently thereafter from:

a. Manufacturing, minting, transporting, promoting, advertising, publicizing, distributing, offering for sale, or selling any NFT products (including but not limited to the Vault NFTs) under Nike's Asserted Marks, any marks substantially indistinguishable therefrom, or any other marks, names, symbols, or logos which are likely to cause confusion or to cause mistake or to deceive persons into the erroneous belief that any products that StockX caused to enter the stream of commerce or any of StockX's commercial activities are sponsored or licensed by Nike, are authorized by Nike, or are connected or affiliated in some way with Nike or Nike's Asserted Marks;

b. Manufacturing, minting, transporting, promoting, advertising, publicizing, distributing, offering for sale, or selling any NFT products (including but not limited to the Vault NFTs) under Nike's Asserted Marks, any marks substantially indistinguishable therefrom, and/or confusingly similar marks;

c. Implying Nike's approval, endorsement, or sponsorship of, or affiliation or connection with, StockX's products, services, or commercial activities, passing off StockX's business as that of Nike, or engaging in any act or series of acts which,

either alone or in combination, constitutes unfair methods of competition with Nike and from otherwise interfering with or injuring Nike's Asserted Marks or the good will associated therewith;

d. Engaging in any act which is likely to dilute the distinctive quality of the Nike Asserted Marks and/or injures Nike's business reputation;

e. Representing or implying that StockX is in any way sponsored by, currently affiliated with, or licensed by Nike;

f. Engaging in the sale of counterfeit Nike goods;

g. Claiming that every item sold on its platform is "100% Verified Authentic" through a "proprietary" process or making any false and/or misleading statements about its product authentication or verification process; or

h. Knowingly assisting, inducing, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in paragraphs 2(a) to (e) above;

3. An order that StockX be required to deliver to Nike for destruction any and all Vault NFTs, associated footwear, digital files, packaging, printed graphics, promotional materials, business cards, signs, labels, advertisements, flyers, circulars, and any other items in any of their possession, custody, or control bearing Nike's Asserted Marks, any marks substantially indistinguishable therefrom, confusingly similar marks;

4. An order granting an award of damages suffered by Nike according to proof at the time of trial;

5. An order that StockX account to Nike for any and all profits earned as a result of StockX's acts in violation of Nike's rights;

6. An award of three times the amount of compensatory damages and increased profits pursuant to 15 U.S.C. § 1117(a);
7. An award of three times such profits or damages, whichever amount is greater, together with a reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(b);
8. An award of statutory damages pursuant to 15 U.S.C. § 1117(c);
9. An order granting an award of punitive damages for the willful and wanton nature of StockX's aforesaid acts under the New York General Business Law and the common law;
10. An order granting pre-judgment interest on any recovery by Nike;
11. An order granting an award of Nike's costs, expenses, and reasonable attorneys' fees; and
12. Granting such other and further relief as is just and proper.

Dated: May 25, 2022

Respectfully submitted,

By: /s/ Tamar Y. Duvdevani

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E

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10 Attorneys for Plaintiffs
YUGA LABS, INC.

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 YUGA LABS, INC.,
15 Plaintiff,
16 v.
17 RYDER RIPPS, JEREMY CAHEN,
18 and DOES 1-10,
19 Defendants.

Case No.:

**COMPLAINT FOR FALSE
DESIGNATION OF ORIGIN, FALSE
ADVERTISING, CYBERSQUATTING,
TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION, UNJUST
ENRICHMENT, CONVERSION, AND
TORTIOUS INTERFERENCE**

DEMAND FOR JURY TRIAL

20
21 Plaintiff Yuga Labs, Inc. (“Yuga Labs”) for their Complaint against
22 Defendant Ryder Ripps, Jeremy Cahen, and Does 1-10, alleges as follows:

23 **NATURE OF THE CASE**

24 1. Plaintiff Yuga Labs is the creator behind one of the world’s most well-
25 known and successful Non-Fungible Token (“NFT”) collections, known as the
26 Bored Ape Yacht Club (a.k.a. “BAYC”). The Bored Ape NFTs have earned
27 significant attention from the media for their popularity and value, including being
28 featured on the cover of a recent edition of *Rolling Stone* magazine and being

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1 dubbed “the epitome of coolness for many” by *Forbes*. Bored Ape NFTs often
2 resell for hundreds of thousands, if not millions, of dollars, and prominent celebrities
3 are proud holders of Bored Ape NFTs. Aside from certain benefits that come with
4 being a member of the exclusive community of Bored Ape NFT holders, much of
5 this NFT collection’s value arises from their rarity – only 10,000 Bored Ape NFTs
6 exist, and each is entirely unique.

7 2. In response to the Bored Ape Yacht Club’s popularity, Defendant
8 Ryder Ripps, a self-proclaimed “conceptual artist,” recently began trolling Yuga
9 Labs and scamming consumers into purchasing RR/BAYC NFTs by misusing Yuga
10 Labs’ trademarks. He seeks to devalue the Bored Ape NFTs by flooding the NFT
11 market with his own copycat NFT collection using the original Bored Ape Yacht
12 Club images and calling his NFTs “RR/BAYC” NFTs. Brazenly, he promotes and
13 sells these RR/BAYC NFTs using *the very same trademarks* that Yuga Labs uses to
14 promote and sell authentic Bored Ape Yacht Club NFTs. He also markets these
15 copycat NFTs as falsely equivalent to an authentic Bored Ape Yacht Club NFT. He
16 then goes on to use Yuga Labs’ marks to promote his coming “Ape Market” NFT
17 marketplace, which requires a person to purchase one of his infringing NFTs to join
18 the Ape Market. This is no mere monkey business. It is a deliberate effort to harm
19 Yuga Labs at the expense of consumers by sowing confusion about whether these
20 RR/BAYC NFTs are in some way sponsored, affiliated, or connected to Yuga
21 Labs’ official Bored Ape Yacht Club, in violation of the Lanham Act and related
22 state law.

23 3. Ripps’ misuse of Yuga Labs’ trademarks and false advertising of the
24 RR/BAYC NFTs is not accidental. These actions are calculated, intentional, and
25 willful with the stated purpose of causing actual and monetary harm to Yuga Labs
26 and to the holders of authentic Bored Ape Yacht Club NFTs, all of which causes
27 real harm to Yuga Labs’ goodwill. Meanwhile, Ripps reaps millions of ill-gotten
28 profit from these sales while celebrating the harm he causes. He and others acting

1 in concert with him have touted and cheered when their deceptions caused a decline
2 in value to authentic Bored Ape Yacht Club NFTs. And, using his social media
3 presence, Ripps has targeted Yuga Labs in a campaign of harassment based on false
4 accusations of racism. These baseless accusations have been used to fuel sales of
5 the fake RR/BAYC NFTs.

6 4. Yuga Labs brings this action against Ripps and others involved in
7 perpetrating his scam to dispel the confusion he has caused in the marketplace, to
8 protect the goodwill in authentic Bored Ape NFTs and the Bored Ape Yacht Club,
9 to protect members of the NFT community from being deceived into thinking they
10 are purchasing a highly coveted Bored Ape NFT, and to protect the general public
11 from deceptive commercialization or use of RR/BAYC NFTs that would lead
12 consumers to believe those NFTs are official Bored Ape NFTs.

13 5. Ripps claims his actions are “satire,” yet he conveniently rakes in
14 millions in ill-gotten profit from sales of the RR/BAYC NFTs using Yuga Labs’
15 marks to make those sales. Copying is not satire, it is theft. And lying to consumers
16 is not conceptual art, it is deception.

17 6. For these and other reasons, Defendants’ conduct has caused and,
18 unless enjoined, will continue to cause damages and irreparable injury to Yuga Labs
19 with an incalculable loss of goodwill. Accordingly, Yuga Labs seeks injunctive
20 relief and damages under the Lanham Act’s False Designation of Origin and False
21 Advertising Laws (15 U.S.C. § 1125(a)); federal cybersquatting law (15 U.S.C.
22 § 1125(d)); unfair competition and false advertising within the meaning of
23 California Business and Professions Code §§ 17200, 17500 *et seq.*; and the common
24 law doctrines of trademark infringement, unfair competition, unjust enrichment,
25 conversion, intentional interference with prospective economic advantage, and
26 negligent interference with prospective economic advantage.

27 7. In short, Yuga Labs wants Ripps *off* of its marks for good.
28

THE PARTIES

1
2 8. Plaintiff Yuga Labs, Inc., is a corporation duly organized and existing
3 under the laws of the State of Delaware.

4 9. Upon information and belief, Defendant Ryder Ripps is an individual
5 whose primary place of residence is in Acton, CA 93510.

6 10. Upon information and belief, Defendant Jeremy Cahen is an individual
7 whose primary place of residence is in Santa Monica, CA 90402.

8 11. Upon information and belief, Defendants Does 1-5 are individuals and
9 entities working in active concert with each other, Ripps, and Cahen to infringe
10 Yuga Labs’ BORED APE YACHT CLUB, BAYC, BORED APE, APE, BA YC
11 Logo, BA YC BORED APE YACHT CLUB Logo, and Ape Skull Logo trademarks
12 (the “BAYC Marks”) and use them to promote and sell RR/BAYC NFTs. The
13 identities of these Doe Defendants are presently unknown to Plaintiff.

14 12. Upon information and belief, Defendants Does 6-10 are individuals and
15 entities working to knowingly perpetuate the promotion and sale of RR/BAYC NFTs.
16 These Does include (but are not limited to) individuals who buy and resell the
17 RR/BAYC NFTs despite knowing that they are fake, and individuals who request
18 Ripps, Cahen, and Does 1-5 to copy specific, authentic Bored Ape NFTs into
19 RR/BAYC NFTs. The identities of these Doe Defendants are presently unknown to
20 Plaintiff.

JURISDICTION AND VENUE

21
22 13. This Court has personal jurisdiction over Defendants because, on
23 information and belief, the named Defendants, Ripps’ and Cahen’s primary places of
24 residence are in the State of California and within this judicial district. Likewise, on
25 information and belief, Ripps and Cahen direct and support their infringing activities
26 and unlawful, unfair, and fraudulent business practices from their California
27 residences.
28

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1 acclaimed ApeFest featuring music, merchandise, art, and more. *See*
2 www.apefest.com.

3 18. On occasion, more tangible benefits accrue to Bored Ape NFT holders.
4 For example, in August 2021, the address associated with each Bored Ape NFT
5 holder was provided with the ability to “mutate” their Bored Ape, resulting in an
6 entirely new and valuable NFT. Yuga Labs is also developing a first-of-its-kind
7 NFT metaverse (“Otherside”) that will tie directly into Bored Ape Yacht Club NFTs.

8 **THE BORED APE YACHT CLUB’S RECOGNITION**

9 19. Since its launch, Yuga Labs’ Bored Ape Yacht Club has generated
10 massive public interest, as reflected in media reports:

- 11 • Rolling Stone Magazine published an issue with Bored Ape NFT art
12 on the cover, accompanied by an article entitled “How Four NFT
13 Novices Created a Billion-Dollar Ecosystem of Cartoon Apes.” The
14 article hailed BAYC as “internet rock stars” and described their rise
15 to fame and fortune. Samantha Hissong, *How Four NFT Novices*
16 *Created a Billion-Dollar Ecosystem of Cartoon Apes*, ROLLING
17 STONE (Nov. 1, 2021),
18 [https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-](https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/)
19 [yacht-club-nft-interview-1250461/](https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/).
- 20 • CNET hailed BAYC as “the biggest NFT project of [its] kind.”
21 Daniel Van Boom, *How Bored Ape Yacht Club NFTs Became*
22 *\$400K Status Symbols*, CNET (Apr. 28, 2022),
23 [https://www.cnet.com/culture/internet/how-bored-ape-yacht-club-](https://www.cnet.com/culture/internet/how-bored-ape-yacht-club-nfts-became-400k-status-symbols/)
24 [nfts-became-400k-status-symbols/](https://www.cnet.com/culture/internet/how-bored-ape-yacht-club-nfts-became-400k-status-symbols/).
- 25 • Wired published an article titled: “How Did the Bored Ape Yacht
26 Club Get So Popular?” Kate Knibbs, *How Did the Bored Ape Yacht*
27 *Club Get So Popular?*, WIRED (Feb. 8, 2022),
28 <https://www.wired.com/story/celebrity-nfts/>.

- 1 • The New York Times called the Bored Ape Yacht Club a “widely-
- 2 hyped series of digital collectibles” and a “phenomenon.” David
- 3 Yaffe-Bellany, *Thefts, Fraud and Lawsuits at the World’s Biggest*
- 4 *NFT Marketplace*, THE NEW YORK TIMES (June 6, 2022),
- 5 [https://www.nytimes.com/2022/06/06/technology/nft-opensea-theft-](https://www.nytimes.com/2022/06/06/technology/nft-opensea-theft-fraud.html)
- 6 [fraud.html](https://www.nytimes.com/2022/06/06/technology/nft-opensea-theft-fraud.html).

7 20. The Bored Ape Yacht Club’s popularity is reflected in the value of

8 Bored Ape NFTs. During a 2021 auction at Sotheby’s, 101 Bored Ape NFTs were

9 resold for \$24.4 million. Samantha Hissong, *How Four NFT Novices Created a*

10 *Billion-Dollar Ecosystem of Cartoon Apes*, ROLLING STONE (Nov. 1, 2021),

11 [https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-](https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/)

12 [interview-1250461/](https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/). A Christie’s auction sold an art collection including four

13 Bored Ape NFTs for \$12 million. *Id.* Individual Bored Ape NFTs likewise sell for

14 high prices, including one that went for \$3.4 million. *Id.* As a result of its success,

15 Yuga Labs was valued at \$4 billion in March of 2022, and received \$450 million in

16 seed funding, which it plans to use to develop Otherside. Jacob Kastrenakes, *Bored*

17 *Ape Yacht Club creator raises \$450 million to build an NFT metaverse*, THE VERGE

18 (Mar. 22, 2022), [https://www.theverge.com/2022/3/22/22991272/yuga-labs-seed-](https://www.theverge.com/2022/3/22/22991272/yuga-labs-seed-funding-a16z-bored-ape-yacht-club-bayc-metaverse-other-side)

19 [funding-a16z-bored-ape-yacht-club-bayc-metaverse-other-side](https://www.theverge.com/2022/3/22/22991272/yuga-labs-seed-funding-a16z-bored-ape-yacht-club-bayc-metaverse-other-side).

20 21. Adding to the BAYC brand’s popularity, major celebrities have publicly

21 announced holding a Bored Ape NFT, including TV host Jimmy Fallon; famous

22 musicians such as Justin Bieber, Madonna, Snoop Dogg, and Eminem; and famous

23 athletes, including Stephen Curry, Serena Williams, and Shaquille O’Neal.

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22. Major brands like Adidas, Universal Music Group, and Arizona Iced Tea have worked with Bored Ape Yacht Club to create entertainment experiences, and in the case of Adidas, virtual and physical clothing.



1 **YUGA LABS' TRADEMARK APPLICATIONS**
2 **AND COMMON LAW TRADEMARK RIGHTS**

3 23. Yuga Labs has used its BAYC Marks in connection with advertising,
4 marketing, and promoting its products and services nationwide and internationally
5 through multiple platforms, including but not limited to the Bored Ape Yacht Club
6 website; NFT markets such as OpenSea; and social media such as Facebook,
7 Instagram, and Twitter.

8 24. Yuga Labs has pending trademark applications for registration in
9 BORED APE YACHT CLUB. The applications were filed on May 27, 2021;
10 September 7, 2021; November 15, 2021; November 18, 2021; and March 15, 2022.
11 The applications cover the BORED APE YACHT CLUB mark for “digital
12 collectibles; digital collectibles sold as non-fungible tokens;” “Online social
13 networking services;” “providing an online marketplace; providing an online
14 marketplace for digital assets, digital tokens, crypto-tokens, utility tokens,
15 non-fungible tokens (NFTs), digital collectibles, crypto-collectibles,
16 cryptocurrencies, digital currencies and virtual currencies; providing an online
17 marketplace for buyers and sellers of digital goods authenticated by non-fungible
18 tokens (NFTs);” “providing an online community for buying, selling, trading, and
19 discussing and exchanging information about digital assets, digital tokens, crypto-
20 tokens, utility tokens, non-fungible tokens (NFTs), digital collectibles, crypto-
21 collectibles, cryptocurrencies, digital currencies and virtual currencies;”
22 “non-fungible tokens (NFTs); downloadable art image files authenticated by
23 non-fungible tokens; downloadable computer software in the nature of non-fungible
24 tokens; non-fungible tokens used with blockchain technology, namely, downloadable
25 image and multimedia files containing artwork; downloadable digital art;” and
26 “Non-downloadable virtual goods, namely, non-fungible tokens; non-downloadable
27 virtual goods, namely, a collectible series of non-fungible tokens; non-downloadable
28 virtual goods, namely, a collectible series of images as embodied in non-fungible

1 tokens; non-downloadable virtual goods, namely, non-fungible tokens used with
2 blockchain technology; non-downloadable virtual goods, namely, non-fungible
3 tokens used with a distributed ledger; non-downloadable virtual goods, namely,
4 digital collectible images using non-fungible tokens and blockchain technology;
5 authentication and certification of data relating to non-fungible tokens via
6 blockchain,” among others.

7 25. Yuga Labs has pending trademark applications for registration in
8 BAYC. The applications were filed on July 19, 2021; November 15, 2021;
9 November 18, 2021; and March 15, 2022. The applications cover the BAYC mark
10 for “digital collectibles; digital collectibles sold as non-fungible tokens;” “Online
11 social networking services;” “providing an online marketplace; providing an online
12 marketplace for digital assets, digital tokens, crypto-tokens, utility tokens,
13 non-fungible tokens (NFTs), digital collectibles, crypto-collectibles,
14 cryptocurrencies, digital currencies and virtual currencies; providing an online
15 marketplace for buyers and sellers of digital goods authenticated by non-fungible
16 tokens (NFTs);” “providing an online community for buying, selling, trading, and
17 discussing and exchanging information about digital assets, digital tokens, crypto-
18 tokens, utility tokens, non-fungible tokens (NFTs), digital collectibles, crypto-
19 collectibles, cryptocurrencies, digital currencies and virtual currencies;”
20 “Non-downloadable virtual goods, namely, non-fungible tokens; non-downloadable
21 virtual goods, namely, a collectible series of non-fungible tokens; non-downloadable
22 virtual goods, namely, a collectible series of images as embodied in non-fungible
23 tokens; non-downloadable virtual goods, namely, non-fungible tokens used with
24 blockchain technology; non-downloadable virtual goods, namely, non-fungible
25 tokens used with a distributed ledger; non-downloadable virtual goods, namely,
26 digital collectible images using non-fungible tokens and blockchain technology;
27 authentication and certification of data relating to non-fungible tokens via
28 blockchain,” among others.

1 26. Yuga Labs has pending trademark applications for registration in
2 BORED APE. The applications were filed on August 16, 2021; November 15, 2021;
3 and November 18, 2021. The applications cover the BORED APE mark for “online
4 social networking services;” “non-fungible tokens (NFTs); downloadable art image
5 files authenticated by non-fungible tokens; downloadable computer software in the
6 nature of non-fungible tokens; non-fungible tokens used with blockchain technology,
7 namely, downloadable image and multimedia files containing artwork; downloadable
8 digital art;” and “Non-downloadable virtual goods, namely, non-fungible tokens;
9 non-downloadable virtual goods, namely, a collectible series of non-fungible tokens;
10 non-downloadable virtual goods, namely, a collectible series of images as embodied
11 in non-fungible tokens; non-downloadable virtual goods, namely, non-fungible
12 tokens used with blockchain technology; non-downloadable virtual goods, namely,
13 non-fungible tokens used with a distributed ledger; non-downloadable virtual goods,
14 namely, digital collectible images using non-fungible tokens and blockchain
15 technology; authentication and certification of data relating to non-fungible tokens
16 via blockchain,” among others.

17 27. Yuga Labs has a pending trademark application for registration in APE.
18 The application was filed on November 3, 2021. The application covers the APE
19 mark for “Design, development, and implementation of software for distributed
20 computing platforms;” and “Providing on-line non-downloadable virtual goods,
21 namely, digital art; providing online digital artwork and images; non-fungible tokens
22 (nfts) or other digital tokens based on blockchain technology,” among others.

23 28. Yuga Labs has pending trademark applications for registration in the
24 BA YC Logo. The applications were filed on May 27, 2021; September 7, 2021;
25 November 15, 2021; and November 18, 2021. The application covers the BA YC
26 Logo mark for “maintain and record ownership of digital illustrations; maintain and
27 record ownership of digital illustrations represented by non-fungible tokens;
28 providing a website featuring an online marketplace for exchanging digital

1 collectibles;” “non-fungible tokens (NFTs); downloadable art image files
2 authenticated by non-fungible tokens; downloadable computer software in the nature
3 of non-fungible tokens; non-fungible tokens used with blockchain technology,
4 namely, downloadable image and multimedia files containing artwork;
5 downloadable digital art;” and “Non-downloadable virtual goods, namely,
6 non-fungible tokens; non-downloadable virtual goods, namely, a collectible series of
7 non-fungible tokens; non-downloadable virtual goods, namely, a collectible series of
8 images as embodied in non-fungible tokens; non-downloadable virtual goods,
9 namely, non-fungible tokens used with blockchain technology; non-downloadable
10 virtual goods, namely, non-fungible tokens used with a distributed ledger;
11 non-downloadable virtual goods, namely, digital collectible images using
12 non-fungible tokens and blockchain technology; authentication and certification of
13 data relating to non-fungible tokens via blockchain,” among others.

14 29. Yuga Labs has pending trademark applications for registration in the
15 BA YC BORED APE YACHT CLUB Logo. The applications were filed on May
16 27, 2021; September 7, 2021; November 15, 2021; and November 18, 2021. The
17 applications cover the BA YC Bored APE Yacht Club Logo mark for “maintain and
18 record ownership of digital illustrations; maintain and record ownership of digital
19 illustrations represented by non-fungible tokens; providing a website featuring an
20 online marketplace for exchanging digital collectibles;” “non-fungible tokens
21 (NFTs); downloadable art image files authenticated by non-fungible tokens;
22 downloadable computer software in the nature of non-fungible tokens; non-fungible
23 tokens used with blockchain technology, namely, downloadable image and
24 multimedia files containing artwork; downloadable digital art;” and
25 “Non-downloadable virtual goods, namely, non-fungible tokens; non-downloadable
26 virtual goods, namely, a collectible series of non-fungible tokens; non-downloadable
27 virtual goods, namely, a collectible series of images as embodied in non-fungible
28 tokens; non-downloadable virtual goods, namely, non-fungible tokens used with

1 blockchain technology; non-downloadable virtual goods, namely, non-fungible
2 tokens used with a distributed ledger; non-downloadable virtual goods, namely,
3 digital collectible images using non-fungible tokens and blockchain technology;
4 authentication and certification of data relating to non-fungible tokens via
5 blockchain,” among others.

6 30. Yuga Labs has pending trademark applications for registration in the
7 Ape Skull Logo. The applications were filed on August 26, 2021; September 7,
8 2021; November 15, 2021; and November 18, 2021. The applications cover the
9 BAYC mark for “digital collectibles; digital collectibles sold as non-fungible
10 tokens;” “Online social networking services;” “non-fungible tokens (NFTs);
11 downloadable art image files authenticated by non-fungible tokens; downloadable
12 computer software in the nature of non-fungible tokens; non-fungible tokens used
13 with blockchain technology, namely, downloadable image and multimedia files
14 containing artwork; downloadable digital art;” and “Non-downloadable virtual
15 goods, namely, non-fungible tokens; non-downloadable virtual goods, namely, a
16 collectible series of non-fungible tokens; non-downloadable virtual goods, namely, a
17 collectible series of images as embodied in non-fungible tokens; non-downloadable
18 virtual goods, namely, non-fungible tokens used with blockchain technology;
19 non-downloadable virtual goods, namely, non-fungible tokens used with a
20 distributed ledger; non-downloadable virtual goods, namely, digital collectible
21 images using non-fungible tokens and blockchain technology; authentication and
22 certification of data relating to non-fungible tokens via blockchain,” among others.

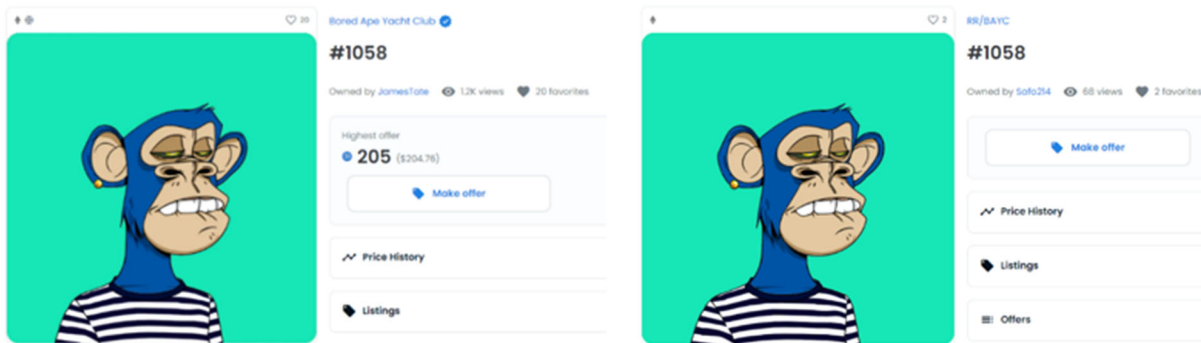
23 31. Since at least April 2021, Yuga Labs has used its BAYC Marks. They
24 have been used for its logo, website, social media pages, marketing, and in
25 connection with its partnerships, products and services. A true and correct copy of
26 examples of their use are attached hereto as Exhibit A.

27 32. As a consequence of the advertising, promotion, and use of these marks,
28 Yuga Labs has developed recognition for its goods and services under the BAYC

1 Marks, and has acquired and enjoys significant goodwill for the BAYC Marks.

2 DEFENDANTS' INFRINGEMENT OF THE BAYC MARKS

3 33. Yuga Labs uses the trademarks BORED APE YACHT CLUB, BAYC,
4 BORED APE, APE, BA YC Logo, BA YC BORED APE YACHT CLUB Logo, and
5 the Ape Skull Logo, on a nationwide and international basis to identify its well-known
6 Bored Ape NFT collection. Defendants Ripps, Cahen, and Does 1-5 use *the very*
7 *same marks* to promote their RR/BAYC NFT collection. Worse still, they attempt to
8 sell these RR/BAYC NFTs on the same NFT marketplaces that Yuga Labs uses to sell
9 its Bored Ape NFTs, such as OpenSea. This is elementary level trademark
10 infringement: Ripps, Cahen, and Does 1-5 are selling the same or related products, in
11 the same place, under the same marks. For example, the images below are both taken
12 from the NFT marketplace OpenSea.¹ The NFT on the left is an official Bored Ape
13 Yacht Club NFT, which is identical to the copycat Ryder Ripps Bored Ape Yacht
14 Club NFT on the right. They even have the same name (#1058).

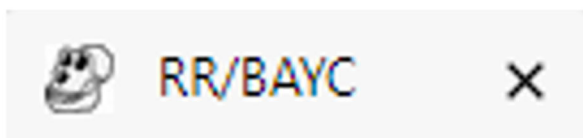


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21 Yuga Labs will not allow Ripps, Cahen, and Does 1-5 to continue to profit off of
22 Yuga Labs' hard work and goodwill. Nor will Yuga Labs allow Ripps, Cahen, and
23 Does 1-5 to continue to mislead the community about the source of the fake NFTs.

24 34. As just a few examples of Ripps, Cahen, and Does 1-5's infringement,
25 Yuga Labs believes, and therefore alleges, that in May 2022, Ripps, Cahen, and
26 Does 1-5 created a website that allows users to "reserve" RR/BAYC NFTs, which

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28
¹ At the time this Complaint was filed, the page displaying this RR/BAYC NFT had been removed.

1 they then mint. The domain for this website is <https://rrbayc.com/>. This website
 2 uses Yuga Labs' BAYC trademark in the title of the page ("RR/BAYC"), in the
 3 browser tab for the page ("RR/BAYC"), and in the domain for the page
 4 (<https://rrbayc.com/>). The website also uses Yuga Labs' Ape Skull Logo mark
 5 (right) in the browser tab icon (left [image enlarged to show detail]):



10
11 The NFTs depicted on the website also contain BAYC Marks. For example,
 12 RR/BAYC #362 has the BAYC, BA YC Logo, and the Ape Skull Logo marks on its
 13 hat and RR/BAYC #863 has the Ape Skull Logo mark on its shirt. Both of these
 14 fake NFTs are identical to their official BAYC counterparts BAYC #362 and BAYC
 15 #863.



35. Next, Yuga Labs believes, and therefore alleges, that Ripps, Cahen, and
 Does 1-5 created sales pages on OpenSea to sell their RR/BAYC NFTs. The first
 OpenSea page used Yuga Labs' BAYC trademark in the title of the page, in the
 cover photo of the page, and in the page URL (<https://opensea.io/collection/ryder-ripps-bayc>). As of the filing of this Complaint, this page is no longer accessible on

1 OpenSea. On information and belief, OpenSea removed this page.

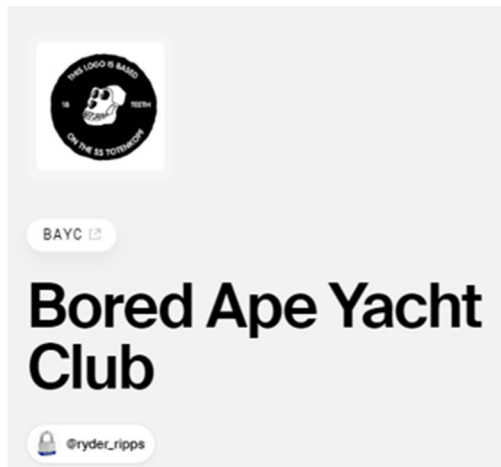
2 36. Immediately after this page was removed, a subsequent sales page
3 was posted to the OpenSea platform under a new name. This page likewise used
4 Yuga Labs' BAYC trademark in the title of the page ("RR/BAYC"), in the cover
5 photo of the page (an image stating "RRBAYC.com"), and in the URL of the page
6 (<https://opensea.io/collection/rrbayc>). The RR/BAYC NFTs depicted on the
7 website also contained the BAYC, BA YC Logo, and Ape Skull Logo marks (see
8 above). And this page used the distorted and falsified BA YC BORED APE
9 YACHT CLUB Logo mark, including the Ape Skull Logo mark, as part of its
10 profile picture. Each of these uses was intended to mislead and confuse community
11 members into buying a fake NFT from Ripps rather than an official Yuga Labs
12 Bored Ape Yacht Club NFT. As of the filing of this Complaint, this page is no
13 longer accessible on OpenSea. On information and belief, OpenSea removed this
14 page. On information and belief, Ripps, Cahen, and Does 1-5 have bragged and
15 falsely touted publicly that they have "won" five takedown requests "against"
16 OpenSea and have indicated that they intend to continue to post their infringing
17 webpages and offer for sale their infringing NFTs on the OpenSea marketplace.

18 37. Continuing their scheme, Yuga Labs believes, and therefore alleges, that
19 Ripps, Cahen, and Does 1-5 created a sales page on Foundation, another NFT
20 marketplace, to sell RR/BAYC NFTs. As of the filing of this Complaint, this page is
21 no longer accessible on Foundation. On information and belief, Foundation removed
22 this page. This page prominently and confusingly used Yuga Labs' BORED APE
23 YACHT CLUB trademark as the title of the page:

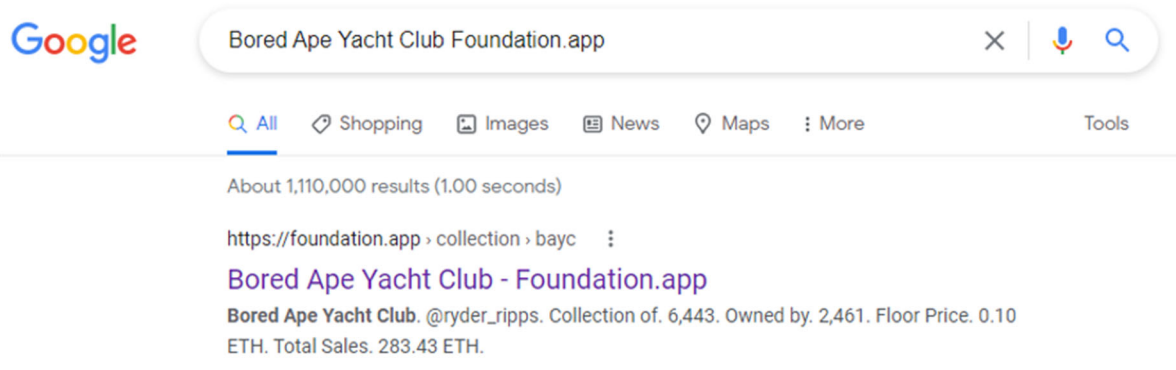
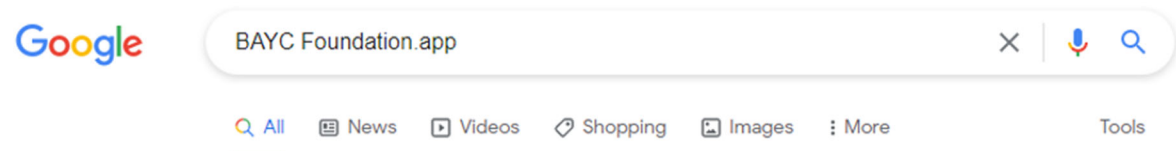
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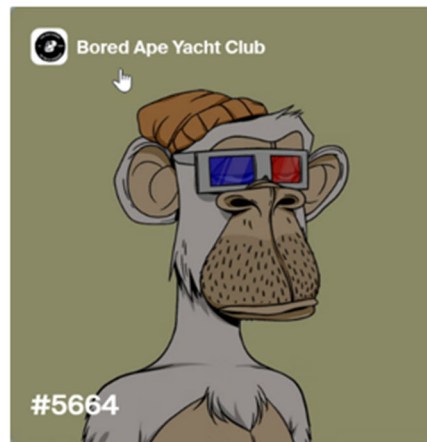


It also used Yuga Labs’ BAYC trademark in an unauthorized hyperlink labeled “BAYC” and in the URL of the page (<https://foundation.app/collection/bayc>). And nothing about the URL indicated that it redirected to the RR/BAYC NFT collection, as opposed to the official BAYC NFT collection. Indeed, even the top result in a Google search for “BAYC Foundation.app” or “Bored Ape Yacht Club Foundation.app” was a misleading link titled “Bored Ape Yacht Club – Foundation.app” that redirected to the fake RR/BAYC NFT collection.



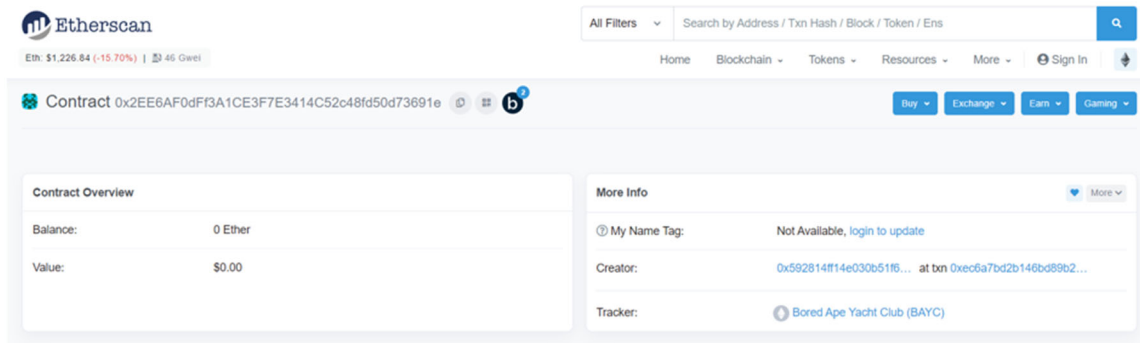
1 Like their OpenSea page, Ripps, Cahen, and Does 1-5's Foundation page was also
 2 deliberately misleading and confusing to consumers and used Yuga Labs' BAYC
 3 marks in an attempt to trick community members into buying their NFTs instead of
 4 the official BAYC NFTs.

5 38. Even more, when a user hovered over the RR/BAYC NFTs on Ripps,
 6 Cahen, and Does 1-5's Foundation page, the page displayed a miniature version of
 7 their warped BA YC BORED APE YACHT CLUB Logo mark. At such a small
 8 size, it is difficult for a consumer to tell the difference between the official Bored
 9 Ape Yacht Club logo, and Ripps, Cahen, and Does 1-5's infringing logo. Next to
 10 this image were the words "Bored Ape Yacht Club", further stealing the BORED
 11 APE YACHT CLUB trademark.



20 And once again, the fake RR/BAYC NFTs depicted for sale on the website contained
 21 the BAYC, BA YC Logo, and Ape Skull Logo marks.

22 39. The Foundation page's unauthorized BAYC hyperlink re-routed to the
 23 Etherscan page: [https://etherscan.io/address/0x2EE6AF0dFf3A1CE3F7E3414C52c](https://etherscan.io/address/0x2EE6AF0dFf3A1CE3F7E3414C52c48fd50d73691e)
 24 [48fd50d73691e](https://etherscan.io/address/0x2EE6AF0dFf3A1CE3F7E3414C52c48fd50d73691e) for Defendants' RR/BAYC collection, which publicly tracks sales
 25 and other information for these NFTs. Yuga Labs believes, and therefore alleges,
 26 that Ripps, Cahen, and Does 1-5 stole Yuga Labs' BORED APE YACHT CLUB and
 27 BAYC trademarks to misleadingly label the token tracker for these RR/BAYC NFTs
 28 as "Bored Ape Yacht Club (BAYC)" (see bottom right corner of image below).



40. Token trackers are important for validating the authenticity of an NFT. And when future buyers of Ripps, Cahen, and Does 1-5's fake NFTs review the token tracker and contract information for the RR/BAYC NFT, they will be misled into thinking that these NFTs were officially sold by Yuga Labs. Indeed Ripps has gloated that it is consumers' own fault for being confused by his fake NFTs, even though Ripps' actions lay bare that he welcomes the confusion.

41. While the OpenSea and Foundation pages described above were taken down, there is no guarantee that Ripps, Cahen, and Does 1-5 will not try, once again, to create new infringing pages. They also continue to use Yuga Labs' marks to promote their RR/BAYC apes on other NFT marketplaces.

42. Still not done with their lazy infringement, Ripps, Cahen, and Does 1-5 promote their RR/BAYC NFTs on a Twitter page named "RYDER RIPPS Bored Ape Yacht Club" (@RR_BAYC). In a May 28, 2022 tweet, this page claims to have made almost 200,000 "tweet impressions," meaning its tweets were seen that many times over a period of two weeks. This Twitter page uses Yuga Labs' BORED APE YACHT CLUB trademark in the name of the page and Yuga Labs' BAYC trademark in the Twitter handle. Moreover, the profile picture for this page is an exact copy of Yuga Labs' Ape Skull Logo trademark, which is also used on the official BAYC Twitter page. Further adding to the confusion, the header photo for this Twitter page is identical to the header photo on BAYC's official Twitter page, and uses Yuga Labs' BAYC and Ape Skull Logo trademarks.

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Ripps, Cahen, and Does 1-5’s persistent use of Yuga Labs’ marks, logos, and branding can have only one plausible purpose: to trade on Yuga Labs’ goodwill and confuse consumers.

43. Ripps also promotes his RR/BAYC NFTs on his Twitter page named “RYDER-RIPPS.ETH” (@ryder_ripps). The header photo for this page contains an image that uses Yuga Labs’ BAYC, BA YC Logo, and Ape Skull Logo trademarks (see bottom right corner of image below).



44. On information and belief, Ripps, Cahen, and Does 1-5 created yet another Twitter page which was designed to closely mimic the official Bored Ape Yacht Club page. This page is expressly created to sell their copycat RR/BAYC NFTs. The Twitter handle for this page (@BoredApeV3) is very similar to the official page’s @BoredApeYC handle, and infringes Yuga Labs’ BORED APE

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1 trademark. This page also rips off the official Bored Ape Yacht Club Twitter page's
 2 name, profile picture, and header photo, infringing Yuga Labs' Ape Skull Logo and
 3 BORED APE YACHT CLUB marks. The page copies language from the official
 4 Bored Ape Yacht Club Twitter page ("buy a Bored Ape") to describe the copycat
 5 page. Even the location ("The Swamp") is the same as the official Bored Ape Yacht
 6 Club Twitter page.



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 15 45. Ripps, Cahen, and Does 1-5's copycat account doesn't stop there. The
 16 tweets themselves are designed to look as though they originate from the official
 17 Bored Ape Yacht Club page. For example, this account tweeted a picture of Yuga
 18 Labs' advertising for ApeFest (left) and retweeted a post in which the original
 19 tweeter tagged the official Bored Ape Yacht Club (right). Using the Bored Ape
 20 Yacht Club name, these posts show as coming *from* "Bored Ape Yacht Club." The
 21 tweets themselves and the use of the infringing handle are intended to confuse
 22 Twitter users into thinking this is the official Bored Ape Yacht Club account.

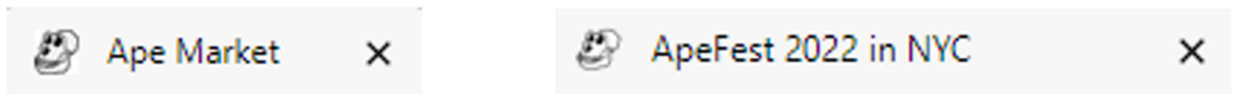
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All of this confusion is intended to funnel Twitter users looking for the official Bored Ape Yacht Club page to Ripps, Cahen, and Does 1-5’s online pages where they promote and sell the infringing NFTs. In this case, imitation is the sincerest form of trickery, and Ripps, Cahen, and Does 1-5 should not be allowed to use Yuga Labs’ trademarks while fooling users into buying their infringing products.

46. Finally, Ripps, Cahen, and Does 1-5 promote their RR/BAYC NFTs on a Twitter page named “Ape Market” (@ApeMarketplace). This page uses Yuga Labs’ APE trademark in the name of the page and the Twitter handle. This page also links to <https://apemarket.com/>, which includes Yuga Labs’ APE trademark in the URL. The Ape Market website also uses Yuga Labs’ Ape Skull Logo mark in



the browser tab icon (left), which is nearly identical to the browser tab icon Yuga Labs uses for its ApeFest website (right). Remarkably, a June 2, 2022 post on this Twitter account claims that “ApeMarket and RR/BAYC are registered trademarks.” This statement is false – Ape Market has not even filed, let alone registered, these

1 infringing marks. This is just another attempt by Ripps, Cahen, and Does 1-5 to
2 deceive consumers into thinking they are legitimate, when in reality they are running
3 a scam.

4 47. Throughout this parade of lies, Ripps, Cahen, and Does 1-5 do not
5 distinguish their use of Yuga Labs' BAYC Marks from the identical look, sound,
6 and commercial impression of Ripps, Cahen, and Does 1-5's use of these marks.
7 Their use of these marks to promote and sell their RR/BAYC NFTs is likely to
8 cause confusion and mislead consumers into thinking the RR/BAYC NFTs are in
9 some way sponsored, affiliated, or connected with Yuga Labs' Bored Ape Yacht
10 Club. Yuga Labs believes, and therefore alleges, that Ripps, Cahen, and Does 1-5
11 purposefully, intentionally, and with malice used Yuga Labs' trademarks to confuse
12 users into purchasing RR/BAYC NFTs.

13 **DEFENDANTS' MISUSE OF PLAINTIFF'S TRADEMARKS**
14 **IS PART OF A SCHEME TO HARASS YUGA LABS, MISLEAD**
15 **CONSUMERS, AND UNJUSTLY ENRICH THEMSELVES.**

16 48. Ripps, Cahen, and Does 1-5's website (<https://rrbayc.com>) claims that
17 minting exact replicas of Yuga Labs' Bored Ape NFTs and reselling them at a profit
18 is "satire." In reality, this is part of a longstanding harassment campaign against
19 Yuga Labs and an attempt to devalue the price of authentic Bored Ape NFTs. At the
20 same time, Ripps, Cahen, and Does 1-5 stand to make millions of dollars by tricking
21 consumers into buying these fake Bored Ape NFTs. Indeed, on information and
22 belief, Ripps has made well over \$5 million through this scheme of pumping and
23 dumping fake NFTs

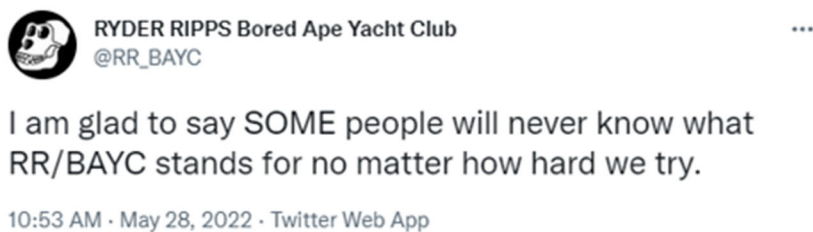
24 49. Since early 2022, Ripps has harassed and personally attacked Yuga
25 Labs and its founders through baseless accusations of racism over social media
26 networks like Twitter and Instagram.

27 50. Ripps also conducted an interview with a popular meme page, to spread
28 this misinformation. He effectively doxxed Yuga Labs' founders by providing their

1 personal identities to a well-known media, news, and entertainment publication,
2 which subsequently published this information.

3 51. Ripps' lies have been widely discredited, but they have nonetheless
4 reached a significant number of people on social media, including his over 50,000
5 Instagram followers and over 15,000 Twitter followers.

6 52. Since May 2022, Ripps' campaign has turned towards minting NFTs
7 that use the original Bored Ape Yacht Club art and promoting them using Yuga
8 Labs' trademarks, as described above. He uses every opportunity to make these
9 RR/BAYC NFTs resemble the authentic Bored Ape NFTs as closely as possible to
10 confuse consumers into buying them. For example, Yuga Labs' original Bored Ape
11 NFTs were assigned a unique number. Individuals request new RR/BAYC NFTs
12 by referring to this same Yuga Labs-known number. Indeed, even though Ripps
13 mints his fake RR/BAYC NFTs out of order, he still names them with the same
14 number as the identical authentic Bored Ape NFT. The @RR_BAYC Twitter
15 account even admits that "RR/BAYC" does not sufficiently distinguish Ripps'
16 RR/BAYC NFTs from the official Bored Ape NFTs:



21 53. Aside from the confusing associations with Yuga Labs' trademarks,
22 Defendants' Twitter accounts repeatedly misrepresent the nature of the RR/BAYC
23 NFTs. For example, Defendants equate buying a RR/BAYC NFT with buying an
24 official BAYC NFT. However, the holder of an authentic Bored Ape NFT has
25 commercial rights to the associated digital art that are not acquired by the purchaser
26 of a RR/BAYC NFT. Moreover, the RR/BAYC NFTs do not offer the same
27 exclusive access to the Bored Ape Yacht Club and other services that authentic
28 Bored Ape NFTs offer, nor do they carry the same value.

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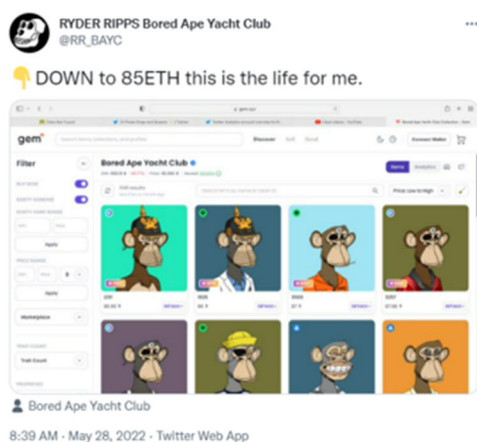
54. Indeed, the RR/BAYC NFTs are so similar to BAYC’s NFTs and confusing to consumers that OpenSea has repeatedly delisted them in response to complaints. Yet, Ripps, Cahen, and Does 1-5 continue to list them. Cahen (known by his Twitter handle “@Pauly0x”) even bragged about how many times the NFTs have been delisted.



55. Ripps, Cahen, and Does 1-5 have also announced the imminent launch of an entire NFT marketplace called “Ape Market” solely to sell their RR/BAYC NFTs alongside authentic Yuga Labs NFTs. Here again, Ripps, Cahen, and Does 1-5 are

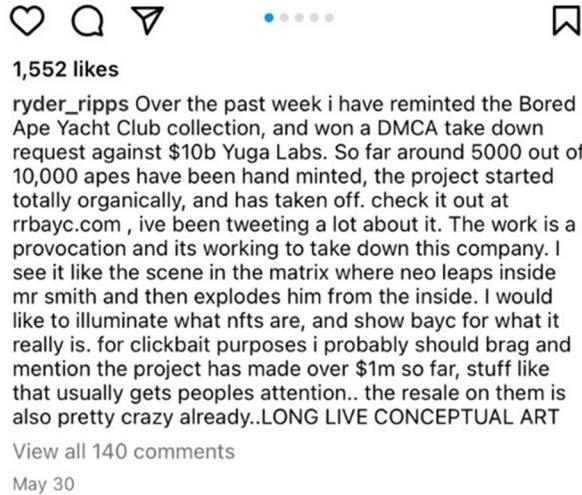
1 using Yuga Labs' trademarks, including APE, to market and sell their infringing
 2 products and service. Specifically, in order to join the Ape Market, users must first
 3 purchase one of Ripps, Cahen, and Does 1-5's infringing RR/BAYC NFTs. The
 4 creators claim that Ape Market will allow users to buy and sell official Bored Ape
 5 NFTs while bypassing Yuga Labs' creator fees and the customary royalties paid
 6 through NFT marketplaces like OpenSea.

7 56. Ripps, Cahen, and Does 1-5 promote these RR/BAYC NFTs in an
 8 attempt to flood the NFT market with Bored Ape lookalikes and decrease the value of
 9 authentic Bored Ape NFTs and harm Yuga Labs. As an example of this, the
 10 @RR_BAYC Twitter account frequently and publicly competes with Yuga Labs on
 11 Twitter, implying that they sell the RR/BAYC NFTs in part to "say[] fuck you" to
 12 Yuga Labs.



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 21 57. Ripps' scam at the expense of Yuga Labs and the larger Bored Ape
 22 community has been extremely profitable. In a May 30, 2022 Instagram post,
 23 Ripps stated that he has made "over \$1m so far" just from this NFT project and has
 24 described the resale profits as "pretty crazy already." He even describes his scheme
 25 as a "provocation . . . to take down [Yuga Labs]." According to this post, as well as
 26 Ripps, Cahen, and Does 1-5's Foundation site, Ripps has created knock-off (but
 27 identical) versions of the art in over half of all 10,000 official Bored Ape NFTs.

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58. Ripps, Cahen, and Does 1-5 have sold the fake Bored Ape NFTs to more than 1,000 purchasers. They have also bragged about and taken responsibility for flooding the NFT market with their RR/BAYC NFTs with the intended effect of devaluing the communities’ authentic Bored Ape NFTs and sowing confusion about which NFT is actually an authentic Bored Ape NFT.

59. Defendants Does 6-10 are individuals who have purchased RR/BAYC NFTs from Ripps, Cahen, and Does 1-5, knowing them to be fake, and have thereafter promoted and represented their NFTs to be authentic or equivalent to Bored Ape NFTs even though RR/BAYC NFTs do not carry the same rights and permissions as authentic Bored Ape NFTs. Defendants Does 6-10 do this to harm Yuga Labs and depress the value of authentic Bored Ape NFTs. They perpetuate Ripps, Cahen, and Does 1-5’s deception by promoting the RR/BAYC NFTs through social media networks and otherwise. Defendants Does 6-10 have joined Ripps, Cahen, and Does 1-5 in acting to devalue authentic Bored Ape NFTs through their participation in social media in promoting the RR/BAYC NFTs while knowing them to be fake. Their specific actions will be alleged when and if their identities are ascertained.

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FIRST CAUSE OF ACTION
FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(A))
(Against All Defendants)

60. Yuga Labs incorporates all paragraphs above by reference.

61. Yuga Labs is the owner of common law rights in the BAYC Marks that precede Ripps, Cahen, and Does 1-5's first use of these marks.

62. On information and belief, Ripps manages, controls, and directs the promotion and sale of the infringing and misleading RR/BAYC NFTs, including by supporting, aiding, and abetting Cahen and Does 1-5.

63. Ripps, Cahen, and Does 1-5 have not obtained a license or permission from Yuga Labs to use the BAYC Marks.

64. Ripps, Cahen, and Does 1-5's unauthorized use of the BAYC Marks falsely suggests that Ripps, Cahen, and Does 1-5 and their products and services are connected with, sponsored by, affiliated with, or related to Yuga Labs. Does 6-10 perpetuated this by promoting and reselling the RR/BAYC NFTs.

65. Ripps, Cahen, and Does 1-5's unauthorized use of the BAYC Marks, and Ripps, Cahen, and Does 1-10's unauthorized promotion and sale of the RR/BAYC NFTs was willful and intentional and constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that products originate from or are authorized by Yuga Labs, all in violation of 15 U.S.C. § 1125(a)(1)(A).

66. Ripps, Cahen, and Does 1-10 are Plaintiff's competitors in the market for NFTs.

67. As a direct and proximate result of Ripps, Cahen, and Does 1-10's conduct, Yuga Labs has suffered and will continue to suffer damages in an amount to be determined at trial.

68. Yuga Labs has been, is now, and will be irreparably injured and

1 damaged by Ripps, Cahen, and Does 1-10’s aforementioned acts, and unless
2 enjoined by the Court, Yuga Labs will suffer further harm to its name, reputation and
3 goodwill. This harm constitutes an injury for which Yuga Labs has no adequate
4 remedy at law.

5 **SECOND CAUSE OF ACTION**

6 **FALSE ADVERTISING**

7 **(15 U.S.C. § 1125(A))**

8 **(Against Defendants Ripps, Cahen, And Does 1-5)**

9 69. Yuga Labs incorporates all paragraphs above by reference.

10 70. On information and belief, Ripps manages, controls, and directs the
11 promotion and sale of the infringing and misleading RR/BAYC NFTs, and the false
12 and misleading implied factual claims in the advertising related thereto, including
13 by supporting, aiding, and abetting Cahen and Does 1-5.

14 71. Ripps, Cahen, and Does 1-5 are Plaintiff’s competitors in the market
15 for NFTs.

16 72. Ripps, Cahen, and Does 1-5 also make the false and misleading implied
17 factual claim in their advertising that their RR/BAYC NFTs are equivalent to
18 authentic Bored Ape NFTs. For instance, they advertised in interstate commerce that
19 “To CLARIFY... how the website <http://rrbayc.com> works. You reserve an ape
20 which you can choose. @ryder_ripps will then mint it for you when he is able to.
21 Then it will get transferred to your wallet Then you can say fuck off to
22 @BoredApeYC!” Similarly, Ripps, Cahen, and Does 1-5 advertised their copycat
23 “Ryder Ripps Bored Ape Yacht Club” as equivalent to the authentic Bored Ape
24 Yacht Club: “Looking at @ApeMarketplace and saying fuck you to @BoredApeYC
25 who’s with me?”

26 73. Ripps, Cahen, and Does 1-5’s advertising of the quality of the
27 RR/BAYC NFTs is likely to deceive consumers of NFTs about the material
28 qualities of RR/BAYC NFTs. In particular, reasonable consumers are likely to

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1 believe that if they hold one of the RR/BAYC NFTs they will have access to the
2 authentic Bored Ape Yacht Club (they will not), that they own rights to the
3 underlying art (they do not), or that they will have access to exclusive launches by
4 Yuga Labs for holders of authentic Bored Ape NFTs (they will not).

5 74. Ripps, Cahen, and Does 1-5's conduct constitutes intentional and willful
6 false statements in connection with goods and/or services distributed in interstate
7 commerce in violation of 15 U.S.C. § 1125(a)(1)(B).

8 75. As a direct and proximate result of Ripps, Cahen, and Does 1-5's
9 conduct, Yuga Labs has suffered and will continue to suffer damages in an amount
10 to be determined at trial.

11 76. Yuga Labs has been, is now, and will be irreparably injured and damaged
12 by Ripps, Cahen, and Does 1-5's aforementioned acts, and unless enjoined by the
13 Court, Yuga Labs will suffer further harm to its name, reputation and goodwill. This
14 harm constitutes an injury for which Yuga Labs has no adequate remedy at law.

15 **THIRD CAUSE OF ACTION**

16 **CYBERSQUATTING**

17 **(15 U.S.C. § 1125(D))**

18 **(Against Defendants Ripps, Cahen, And Does 1-5)**

19 77. Yuga Labs incorporates all paragraphs above by reference.

20 78. On information and belief, Ripps manages, controls, and directs the
21 promotion and sale of the infringing and misleading RR/BAYC NFTs, and the
22 intentional and bad faith use and registration of the infringing domains, including
23 by supporting, aiding, and abetting Cahen and Does 1-5.

24 79. Yuga Labs is the owner of common law rights in BAYC and APE that
25 precede Ripps, Cahen, and Does 1-5's first use of these marks.

26 80. Ripps, Cahen, and Does 1-5 have not obtained a license or permission
27 from Yuga Labs to use the BAYC and APE marks.

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1 81. Ripps, Cahen, and Does 1-5 registered and used the domain names
2 <https://rrbayc.com/> and <https://apemarket.com/> (“Domain Names”), which are
3 confusingly similar to Yuga Labs’ BAYC and APE marks.

4 82. Ripps, Cahen, and Does 1-5 registered and used the Domain Names
5 with a bad faith intent to profit from their confusing similarity to Plaintiff’s BAYC
6 and APE marks. Among other things, upon information and belief:

- 7 (a) Ripps, Cahen, and Does 1-5 registered the Domain Names,
8 despite knowing that they had no rights in the BAYC or APE
9 marks.
- 10 (b) Ripps, Cahen, and Does 1-5 made no bona fide, non-infringing,
11 commercial use or fair non-commercial use of the Domain
12 Names.
- 13 (c) Ripps, Cahen, and Does 1-5 intended to divert consumers looking
14 for Plaintiff’s goods/services online to the websites bearing the
15 Domain Names by exploiting the confusing similarity of the
16 Domain Names and the BAYC and APE marks for their
17 commercial gain and to tarnish or disparage the BAYC and APE
18 marks.
- 19 (d) Ripps, Cahen, and Does 1-5 registered and used the Domain
20 Names in bad faith as described herein.

21 83. As a direct and proximate result of Ripps, Cahen, and Does 1-5’s
22 conduct, Yuga Labs has suffered and will continue to suffer damages in an amount to
23 be determined at trial.

24 84. Ripps, Cahen, and Does 1-5’s conduct is directly and proximately
25 causing substantial, immediate, and irreparable harm and injury to Yuga Labs, and
26 to its goodwill and reputation, and will continue to damage Yuga Labs unless
27 enjoined by this court. Yuga Labs has no adequate remedy at law.

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1 85. Yuga Labs is entitled to injunctive relief pursuant to 15 U.S.C. §§ 1116
2 and 1125(d)(1)(C), including, among other injunctive relief, cancellation of Ripps,
3 Cahen, and Does 1-5's registration of the Domain Names or transfer of the domains
4 to Yuga Labs.

5 **FOURTH CAUSE OF ACTION**
6 **COMMON LAW TRADEMARK INFRINGEMENT**
7 **(Against All Defendants)**

8 86. Yuga Labs incorporates all paragraphs above by reference.

9 87. Yuga Labs owns and has valid common law rights in its BAYC Marks.

10 88. On information and belief, Ripps manages, controls, and directs the
11 promotion and sale of the infringing and misleading RR/BAYC NFTs, including by
12 supporting, aiding, and abetting Cahen and Does 1-5.

13 89. Ripps, Cahen, and Does 1-10's use of the BAYC Marks infringes upon
14 Yuga Labs' common law trade mark.

15 90. Ripps, Cahen, and Does 1-5's use of the BAYC Marks is likely to
16 cause confusion, mistake, and deception among consumers and the public as to the
17 source, origin, sponsorship, affiliation, nature and/or quality of Yuga Labs' services
18 and commercial activities, thereby causing loss, damage, and injury to Yuga Labs
19 and to the purchasing public. Does 6-10 perpetuated this by promoting the
20 RR/BAYC NFTs using these marks.

21 91. Ripps, Cahen, and Does 1-10's unauthorized use of the BAYC Marks
22 is also likely to cause consumers to be confused as to the source, nature, and quality
23 of the services Ripps, Cahen, and Does 1-10 are promoting or selling.

24 92. Ripps, Cahen, and Does 1-10's unauthorized use of the BAYC Marks
25 in connection with the sale of its services allows, and will continue to allow, Ripps,
26 Cahen, and Does 1-10 to receive the benefit of the goodwill established at the labor
27 and expense of Yuga Labs and to gain acceptance of Ripps, Cahen, and Does 1-10's
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1 goods and services, not based on the merits of those goods and services, but on
2 Yuga Labs' reputation and goodwill.

3 93. Ripps, Cahen, and Does 1-10's unauthorized use of the BAYC Marks
4 in connection with the sale of its goods and services deprives Yuga Labs of the
5 ability to control the consumer perception of the quality of the goods and services
6 marketed under the BAYC Marks, and places Yuga Labs' valuable reputation and
7 goodwill in the hands of Ripps, Cahen, and Does 1-10, over which Yuga Labs has
8 no control.

9 94. As a direct and proximate result of Ripps, Cahen, and Does 1-10's
10 violations of Yuga Labs' common law trademark rights, Yuga Labs has suffered
11 and will continue to suffer damages in an amount that Yuga Labs will prove at trial.

12 95. As a direct and proximate result of Ripps, Cahen, and Does 1-10's
13 violations of Yuga Labs' common law trademark rights, these Defendants have
14 been unjustly enriched in an amount not yet ascertained. Accordingly, Yuga Labs
15 is entitled to recover restitution for Ripps, Cahen, and Does 1-10's unjust
16 enrichment in an amount to be determined at trial.

17 96. Ripps, Cahen, and Does 1-10 acted with oppression, fraud, or malice in
18 their trademark infringement entitling Yuga Labs to an award of punitive damages.

19 97. Yuga Labs has been, is now, and will be irreparably injured and
20 damaged by Ripps, Cahen, and Does 1-10's aforementioned acts, and unless
21 enjoined by the Court, Yuga Labs will suffer further harm to its name, reputation and
22 goodwill. This harm constitutes an injury for which Yuga Labs has no adequate
23 remedy at law.

24 98. Yuga Labs is entitled to a judgment enjoining and restraining Ripps,
25 Cahen, and Does 1-10 from engaging in further trademark infringement.

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FIFTH CAUSE OF ACTION
COMMON LAW UNFAIR COMPETITION
(Against All Defendants)

99. Yuga Labs incorporates all paragraphs above by reference.

100. On information and belief, Ripps manages, controls, and directs the promotion and sale of the infringing and misleading RR/BAYC NFTs, including by supporting, aiding, and abetting Cahen and Does 1-5.

101. Ripps, Cahen, and Does 1-5's unauthorized use of the BAYC Marks is likely to cause confusion, mistake, and deception among consumers and the public as to the source, origin, sponsorship, affiliation, nature and/or quality of Yuga Labs' services and commercial activities, thereby causing loss, damage, and injury to Yuga Labs and to the purchasing public and constitutes unfair competition in violation of the common law. Does 6-10 perpetuated this by promoting and reselling the RR/BAYC NFTs.

102. As a direct and proximate result of Ripps, Cahen, and Does 1-10's conduct, Yuga Labs has suffered and will continue to suffer damages in an amount to be determined at trial.

103. Ripps, Cahen, and Does 1-10 acted with oppression, fraud, or malice in their unfair competition entitling Yuga Labs to an award of punitive damages.

104. Yuga Labs has been, is now, and will be irreparably injured and damaged by Ripps, Cahen, and Does 1-10's aforementioned acts, and unless enjoined by the Court, Yuga Labs will suffer further harm to its name, reputation and goodwill. This harm constitutes an injury for which Yuga Labs has no adequate remedy at law.

105. Yuga Labs is entitled to a judgment enjoining and restraining Ripps, Cahen, and Does 1-10 from engaging in further unfair competition.

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SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
(CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.)
(Against All Defendants)

106. Yuga Labs incorporates all paragraphs above by reference.

107. On information and belief, Ripps manages, controls, and directs the promotion and sale of the infringing and misleading RR/BAYC NFTs, including by supporting, aiding, and abetting Cahen and Does 1-5.

108. Ripps, Cahen, and Does 1-5’s unauthorized use of the BAYC Marks is likely to cause confusion, mistake, and deception among consumers and the public as to the source, origin, sponsorship, affiliation, nature and/or quality of Yuga Labs’ services and commercial activities, thereby causing loss, damage, and injury to Yuga Labs and to the purchasing public. Defendants Does 6-10 perpetuated this by promoting and reselling the RR/BAYC NFTs.

109. Ripps, Cahen, and Does 1-10’s unauthorized use of the BAYC Marks and Ripps, Cahen, and Does 1-10’s unauthorized promotion and sale of these NFTs constitutes unfair competition, including unlawful, unfair, and fraudulent business practices in violation of California Business and Professions Code §§ 17200 et seq. and of Yuga Labs’ rights.

110. As a direct and proximate result of Ripps, Cahen, and Does 1-10’s conduct, Yuga Labs has suffered and will continue to suffer damages in an amount to be determined at trial.

111. Yuga Labs has been, is now, and will be irreparably injured and damaged by Ripps, Cahen, and Does 1-10’s aforementioned acts, and unless enjoined by the Court, Yuga Labs will suffer further harm to its name, reputation and goodwill. This harm constitutes an injury for which Yuga Labs has no adequate remedy at law. Ripps, Cahen, and Does 1-10 acted with oppression, fraud, or malice in their unfair competition entitling Yuga Labs to an award of punitive damages.

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1 112. Yuga Labs is entitled to a judgment enjoining and restraining Ripps,
2 Cahen, and Does 1-10 from engaging in further unfair competition.

3 **SEVENTH CAUSE OF ACTION**

4 **FALSE ADVERTISING**

5 **(CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.)**

6 **(Against Defendants Ripps, Cahen, And Does 1-5)**

7 113. Yuga Labs incorporates all paragraphs above by reference.

8 114. On information and belief, Ripps manages, controls, and directs the
9 promotion and sale of the infringing and misleading RR/BAYC NFTs, including by
10 supporting, aiding, and abetting Cahen and Does 1-5.

11 115. Ripps, Cahen, and Does 1-5 are Plaintiff’s competitors in market for
12 NFTs.

13 116. Ripps, Cahen, and Does 1-5 also make the false and misleading
14 implied factual claim in their advertising that their RR/BAYC NFTs are equivalent
15 to authentic Bored Ape NFTs. For instance, they advertised that “To CLARIFY...
16 how the website <http://rrbayc.com> works. You reserve an ape which you can
17 choose. @ryder_ripps will then mint it for you when he is able to. Then it will get
18 transferred to your wallet Then you can say fuck off to @BoredApeYC!”
19 Similarly, Ripps, Cahen, and Does 1-5 advertised their copycat “Ryder Ripps Bored
20 Ape Yacht Club” as equivalent to the authentic Bored Ape Yacht Club: “Looking
21 at @ApeMarketplace and saying fuck you to @BoredApeYC who’s with me?”

22 117. Ripps, Cahen, and Does 1-5’s advertising of the quality of the
23 RR/BAYC NFTs is likely to deceive consumers of NFTs about the material qualities
24 of Defendants’ NFTs. In particular, reasonable consumers are likely to believe that
25 if they hold one of the RR/BAYC NFTs they will have access to the authentic Bored
26 Ape Yacht Club (they will not), that they own rights to the underlying art (they do
27 not), or that they will have access to exclusive launches by Yuga Labs for holders of
28 authentic Bored Ape NFTs (they will not).

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1 118. Ripps, Cahen, and Does 1-5 knew or should have known that the
2 representations they made regarding RR/BAYC NFTs and Ape Market were false
3 or misleading at the time it made them.

4 119. Ripps, Cahen, and Does 1-5 intended to induce reliance on the false or
5 misleading representations because they intended to attract potential customers to
6 purchase its RR/BAYC NFTs and use its Ape market platform.

7 120. As a direct and proximate result of Ripps, Cahen, and Does 1-5's
8 conduct, Yuga Labs has suffered and will continue to suffer damages in an amount
9 to be determined at trial.

10 121. Ripps, Cahen, and Does 1-5's conduct constitutes willful false or
11 misleading statements in violation of Cal. Bus. & Prof. code §§ 17500 *et seq.*
12 Ripps, Cahen, and Does 1-5 acted with oppression, fraud, or malice in their false
13 advertising entitling Yuga Labs to an award of punitive damages.

14 122. Yuga Labs has been, is now, and will be irreparably injured and damaged
15 by Ripps, Cahen, and Does 1-5's aforementioned acts, and unless enjoined by the
16 Court, Yuga Labs will suffer further harm to its name, reputation and goodwill. This
17 harm constitutes an injury for which Yuga Labs has no adequate remedy at law.

18 **EIGHTH CAUSE OF ACTION**
19 **UNJUST ENRICHMENT**
20 **(Against All Defendants)**

21 123. Yuga Labs incorporates all paragraphs above by reference.

22 124. Yuga Labs is not in a contractual relationship with any Defendants.

23 125. On information and belief, Ripps manages, controls, and directs the
24 promotion and sale of the infringing and misleading RR/BAYC NFTs, including by
25 supporting, aiding, and abetting Cahen and Does 1-5.

26 126. Ripps, Cahen, and Does 1-5 used Yuga Labs' BAYC Marks without
27 authorization, and as a result obtained money or property through their misconduct
28 that rightly belongs to Yuga Labs. In doing so, they have deprived Yuga Labs of

1 that money or property. Likewise, Does 6-10 perpetuated this by reselling the
2 RR/BAYC NFTs, and as a result obtained money or property through their
3 misconduct that rightly belongs to Yuga Labs. In doing so, they have deprived Yuga
4 Labs of that money or property.

5 127. As a result of Ripps, Cahen, and Does 1-10’s unauthorized use of these
6 marks, they have unjustly enriched themselves at Yuga Labs’ expense.

7 128. As a direct and proximate result of Ripps, Cahen, and Does 1-10’s
8 conduct, Yuga Labs has suffered and will continue to suffer damages in an amount
9 to be determined at trial.

10 129. It would be against equity and good conscience to permit Ripps, Cahen,
11 and Does 1-10 to retain the benefit of this misconduct.

12 **NINTH CAUSE OF ACTION**

13 **CONVERSION**

14 **(Against Defendants Ripps, Cahen, And Does 1-5)**

15 130. Yuga Labs incorporates all paragraphs above by reference.

16 131. On information and belief, Ripps manages, controls, and directs the
17 promotion and sale of the infringing and misleading RR/BAYC NFTs, including by
18 supporting, aiding, and abetting Cahen and Does 1-5.

19 132. Yuga Labs owns and has valid common law rights in its BAYC Marks.

20 133. Ripps, Cahen, and Does 1-5 substantially interfered with Yuga Labs’
21 ownership and rights in these marks by knowingly or intentionally using them to
22 promote their own RR/BAYC NFTs.

23 134. Yuga Labs did not consent to Ripps, Cahen, and Does 1-5’s use of
24 these marks.

25 135. As a direct and proximate result of Ripps, Cahen, and Does 1-5’s
26 conduct, Yuga Labs has suffered and will continue to suffer damages in an amount
27 to be determined at trial.

28 136. Yuga Labs has been, is now, and will be irreparably injured and

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1 damaged by Ripps, Cahen, and Does 1-5’s aforementioned acts, and unless enjoined
2 by the Court, Yuga Labs will suffer further harm to its name, reputation and
3 goodwill. This harm constitutes an injury for which Yuga Labs has no adequate
4 remedy at law.

5 137. Yuga Labs is entitled to a judgment enjoining and restraining Ripps,
6 Cahen, and Does 1-5 from engaging in further conversion of the BAYC Marks.

7 138. Ripps, Cahen, and Does 1-5 acted with oppression, fraud, or malice in
8 converting Yuga Labs’ trademarks entitling Yuga Labs to an award of punitive
9 damages.

10 **TENTH CAUSE OF ACTION**
11 **INTENTIONAL INTERFERENCE WITH**
12 **PROSPECTIVE ECONOMIC ADVANTAGE**
13 **(Against All Defendants)**

14 139. Yuga Labs incorporates all paragraphs above by reference.

15 140. On information and belief, Ripps manages, controls, and directs the
16 promotion and sale of the infringing and misleading RR/BAYC NFTs, including by
17 supporting, aiding, and abetting Cahen and Does 1-5.

18 141. An economic relationship existed between Yuga Labs and individuals
19 who have purchased Bored Ape NFTs.

20 142. These economic relationships carried a probability of an economic
21 benefit to Yuga Labs in that prior purchasers would be likely to purchase and/or
22 resell additional Yuga Labs products, whereby Yuga Labs may earn a creator fee as
23 a percentage of the total sale.

24 143. Ripps, Cahen, and Does 1-10 have knowledge of these economic
25 relationships.

26 144. Ripps, Cahen, and Does 1-10 intentionally sought to interfere with
27 these relationships by, *inter alia*, (a) appropriating Yuga Labs’ trademarks,
28 (b) engaging in unfair competition, (c) engaging in false advertising, and/or

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1 (d) offering a competing fake product to devalue Yuga Labs' authentic Bored Ape
2 NFTs and the goodwill associated with them. Ripps, Cahen, and Does 1-10 knew
3 that interference with the relationship between Yuga Labs and individuals who have
4 purchased or were interested in purchasing an authentic Bored Ape NFT was certain
5 or substantially certain to occur as a result of Ripps, Cahen, and Does 1-10's
6 wrongful conduct.

7 145. Actual interference with the relationship between Yuga Labs and
8 individuals who have purchased or might purchase Bored Ape NFTs occurred in that
9 prior purchasers of Bored Apes "dumped" Yuga Labs NFTs in favor of Ripps,
10 Cahen, and Does 1-10's RR/BAYC NFTs, driving down the resale price of Bored
11 Ape NFTs.

12 146. As a direct and proximate result of Ripps, Cahen, and Does 1-10's
13 conduct, Yuga Labs has suffered and will continue to suffer damages in an amount
14 to be determined at trial.

15 147. Yuga Labs has been, is now, and will be irreparably injured and damaged
16 by Ripps, Cahen, and Does 1-10's aforementioned acts, and unless enjoined by the
17 Court, Yuga Labs will suffer further harm to its name, reputation and goodwill. This
18 harm constitutes an injury for which Yuga Labs has no adequate remedy at law.

19 148. Yuga Labs is entitled to a judgment enjoining and restraining Ripps,
20 Cahen, and Does 1-10 from engaging in further interference with its prospective
21 economic relations.

22 149. Ripps, Cahen, and Does 1-10 acted with oppression, fraud, or malice
23 in their interference with Yuga Labs' prospective economic advantage entitling
24 Yuga Labs to an award of punitive damages.

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1 158. As a direct and proximate result of Ripps, Cahen, and Does 1-10’s
2 conduct, Yuga Labs has suffered and will continue to suffer damages in an amount
3 to be determined at trial.

4 159. Yuga Labs has been, is now, and will be irreparably injured and
5 damaged by Ripps, Cahen, and Does 1-10’s aforementioned acts, and unless
6 enjoined by the Court, Yuga Labs will suffer further harm to its name, reputation and
7 goodwill. This harm constitutes an injury for which Yuga Labs has no adequate
8 remedy at law.

9 160. Yuga Labs is entitled to a judgment enjoining and restraining Ripps,
10 Cahen, and Does 1-10 from engaging in further interference with its prospective
11 economic relations.

12 161. Ripps, Cahen, and Does 1-10 acted with oppression, fraud, or malice
13 in their interference with Yuga Labs’ prospective economic advantage entitling
14 Yuga Labs to an award of punitive damages.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Yuga Labs prays for relief as follows:

17 1. Entry of an order and judgment requiring that Defendants and their
18 officers, agents, servants, employees, owners and representatives, and all other
19 persons, firms or corporations in active concert or participation with it, be
20 preliminarily and permanently enjoined and restrained from (a) using in any manner
21 the BAYC Marks, or any name, mark or domain name that wholly incorporates the
22 BAYC Marks or is confusingly similar to or a colorable imitation of these marks;
23 and (b) doing any act or thing calculated or likely to cause confusion or mistake in
24 the minds of members of the public, or prospective customers of Yuga Labs’
25 products or services, as to the source of the products or services offered for sale,
26 distributed, or sold, or likely to deceive members of the public, or prospective
27 customers, into believing that there is some connection between Defendants and
28 Yuga Labs;

1 2. A judgment ordering Defendants, pursuant to 15 U.S.C. § 1116(a), to
2 file with this Court and serve upon Yuga Labs within thirty (30) days after entry of
3 the injunction, a report in writing under oath setting forth in detail the manner and
4 form in which Defendants have complied with the injunction and ceased all
5 offering of services under the BAYC Marks as set forth above;

6 3. A judgment ordering Defendants, pursuant to 15 U.S.C. § 1118, to
7 deliver up for destruction, or to show proof of said destruction or sufficient
8 modification to eliminate the infringing matter, all articles, packages, wrappers,
9 products, displays, labels, signs, vehicle displays or signs, circulars, kits, packaging,
10 letterhead, business cards, promotional items, clothing, literature, sales aids,
11 receptacles, servers, social media accounts, or other matter in the possession,
12 custody, or under the control of Defendants or their agents bearing the BAYC Marks
13 in any manner, or any mark that is confusingly similar to or a colorable imitation of
14 this mark;

15 4. A judgment ordering Defendants to withdraw any applications
16 Defendants filed anywhere for the BAYC Marks;

17 5. A judgment in the amount of Yuga Labs’ actual damages, Defendants’
18 profits, Yuga Labs’ reasonable attorneys’ fees and costs of suit, and pre-judgment
19 interest pursuant to 15 U.S.C. § 1117;

20 6. A judgment for enhanced damages under 15 U.S.C. § 1117 and
21 punitive damages under state law as appropriate; and

22 7. Any and all equitable relief that may be available to Yuga Labs,
23 including without limitation restitution, disgorgement, and the imposition of a
24 constructive trust.

25 8. A judgment granting Yuga Labs such other and further relief as the
26 Court deems just and proper.

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Dated: June 24, 2022

FENWICK & WEST LLP

By: /s/ Eric Ball

Eric Ball
Attorneys for Plaintiff
Yuga Labs, Inc.

JURY DEMAND

Plaintiff Yuga Labs, Inc. hereby requests a trial by jury.

Dated: June 24, 2022

FENWICK & WEST LLP

By: /s/ Eric Ball

Eric Ball
Attorneys for Plaintiff
Yuga Labs, Inc.

FENWICK & WEST LLP