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Sports world rushing to trademark NFT ventures, but legal questions remain

Rob Gronkowski made a big splash in April 2021 when the Tampa Bay Buccaneers tight end became the first professional athlete to launch his own non-fungible token (NFT) trading cards.

A sports marketing curiosity not that long ago, NFTs are becoming mainstream as creators tap into sports fans' hunger for novel collectibles related to their favorite athletes and teams.

An NFT is a unique digital asset or token that is linked to digital art, music or a collectible. A network of computers records the sale of NFTs on a blockchain, also known as a digital ledger, which gives buyers proof of ownership and authenticity. NFTs, which exist purely in the digital world, can only be purchased with cryptocurrency, most often Ethereum (ETH).

Athletes, teams, leagues and sports brands are embracing NFTs as a new way to connect with fans and promote their interests. The potential to make serious money in the sports NFT marketplace is also a factor — the digital assets are expected to generate more than \$2 billion in 2022, according to a report by Financial News Media.

The NFT metaverse — an interactive, virtual reality environment — is still very new, and legal issues are rapidly arising. Intellectual property issues, and in particular trademark protection, are at the top of the list, and sports NFT minters are now running to the U.S. Patent and Trademark Office to protect their virtual collectible ventures. Lawsuits over trademark disputes in the nascent industry have already been filed.

The National Basketball Association took the lead in 2020 when it debuted NBA Top Shot, a marketplace for digital collectibles called “moments” that feature memorable video clips of players in action.



SPORTS MARKETING PLAYBOOK

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Now the NBA is building its own NFT metaverse. In April, the league applied to trademark NFTs of memorabilia including game tickets and programs, jerseys, uniforms, basketballs, images of players, fans and arenas, team and league logos, and memes, according to its trademark application.

Blockchain tech firm Dapper Labs, which created NBA Top Shot for the NBA and the National Basketball Players Association, is well-positioned to play a key role in the future of sports NFTs.

It has invested in an NFT portfolio management platform called EvaluateMarket, which hosts Dapper-developed sports NFT marketplaces, according to Sport-Techie. These include NBA Top Shot and two newer ventures, the National Football League's NFL All Day and the Ultimate Fighting Championship's UFC Strike.

As NFT marketplaces and platforms proliferate, athletes, teams and brands

are jumping on the digital collectibles bandwagon and lining up to trademark their new ventures.

Marketing-savvy athletes from NBA superstar Shaquille O'Neal to snowboarding legend Shaun White are seeking trademark protection for their NFT projects. These forward-thinking athletes recognize that digital collectibles will help them reach younger fans in innovative ways while monetizing their personal and business brands.

Teams entering the NFT metaverse include the NBA's Cleveland Cavaliers, which launched its first NFT venture earlier this year called My Cavs Locker.

The initiative offers fans a free digital storage space to display their Cavs NFT collectibles. Fans that attended a February home game against the Indiana Pacers in person received a Cavaliers NFT collectible in the form of a “Let 'Em Know” branded T-shirt to display in their Cavs Locker, according to the team. (“Let 'Em Know” by rapper Moe Beatz is the title of the Cavs' current hype song.)

Well-known sports brands such as Callaway, Champion, New Balance, Nike and Under Armour have filed USPTO applications for “virtual goods.” USPTO approval will allow the creation of NFTs from sports memorabilia, clothing and shoes.

Nike, a marketing trailblazer that has filed numerous NFT-related trademark applications, is also leading the way in another area — trademark infringement litigation. The sports apparel giant is one of a handful of brands challenging unauthorized NFTs that are minted from trademarked real-world goods.

Earlier this year, Nike sued sneaker resale marketplace StockX LLC, accusing it of creating and selling NFTs of its trademarked sneakers without permission. StockX resells merchandise made by a variety of companies — including

Nike — but StockX’s NFTs of Nike products do not originate from Nike, the brand argued in federal court in New York.

StockX counters that its NFTs merely serve as a traceable digital receipt because each one is linked to a physical pair of Nike sneakers. StockX says it stores the physical sneakers in a vault for the

NFT buyer to claim.

It will then ship the sneakers to the buyer and remove the related NFT from the buyer’s NFT portfolio. The reseller argues that its use of Nike images is protected by the doctrine of nominative fair use, which allows certain artistic uses of a trademark as long as the use is not mislead-

ing about the source of the trademarked work.

Unsurprisingly, *Nike, Inc. v StockX LLC* No. 22-CV-00983 is being closely watched. Its outcome will provide at least preliminary answers to key questions, including whether NFTs constitute original works that are eligible for trademark protection and how owners of

NFTs may use their digital assets.

Of course, trademark law notoriously lags far behind the fast-paced world of tech innovation. But decisions made in *Nike* and in other pending NFT litigation will lay the groundwork for current and future brand battles over IP rights in the metaverse.