

Miramax Gets Medieval on Quentin Tarantino's Pulp Fiction NFTs: Takeaways for Non-Fungible Token (NFT) Creators, Buyers and Sellers

The Lawsuit Against Tarantino

On November 16, 2021, Miramax filed a lawsuit against famed film director Quentin Tarantino, alleging breach of contract, copyright infringement, trademark infringement, and unfair competition. While intellectual property legal disputes are nothing new in Hollywood, the non-fungible token (“NFT”) subject matter makes the case novel.

According to Miramax's complaint, Tarantino is “eager to cash in” on the recent NFT boom and “recently announced plans to auction off seven ‘exclusive scenes’ from the 1994 motion picture Pulp Fiction in the form of NFTs.” The complaint asserts that only Miramax, not Tarantino, owns the necessary intellectual property rights to the materials Tarantino intends to sell as NFTs. These materials include original handwritten cut scenes from Pulp Fiction, related artwork, and unique commentary from Tarantino.

Miramax sent Tarantino a demand letter prior to filing the suit, which Tarantino's lawyers responded to by claiming that his “reserved rights” to the materials to be sold as NFTs are sufficient. Miramax characterizes those rights as “limited” and “far too narrow” under the parties' operative agreements (signed in 1993) for Tarantino to use “to unilaterally produce, market, and sell the Pulp Fiction NFTs.”

No matter how the lawsuit ultimately resolves, it provides a good case study on some of the [intellectual property](#) (“IP”) issues involved with NFTs.

What are NFTs?

NFTs are unique, non-interchangeable identifiers made of computer code stored on a blockchain (a distributed immutable digital ledger). Once an NFT is created or “minted”, it is recorded on the blockchain and used to identify digital or real-world items and provide an immutable record of ownership of those items. These attributes ensure that no one can counterfeit an NFT or change the associated ownership record on the same blockchain. As such, NFTs are incredibly useful for recording, verifying, and transferring the ownership of NFT identified items such as digital artwork, music, collectibles and many other things. One analogy is to think of NFTs as the digital equivalent of a physical real property deed or motor vehicle title. Like deeds and titles, NFTs act as the proof of ownership of valuable property but are not the property itself.

What NFTs Are Not

If NFTs are like digital property deeds and not the underlying property itself, it follows that the legal rights accompanying NFTs have the same ownership limitations as the underlying property. For example, if someone owns a physical mint condition copy of Action Comics No. 1 (the first comic book appearance of Superman), their ownership rights extend only to that physical copy. Just because they own that copy of the comic book itself, they don't also own the Superman® trademark or the copyrights to that comic book or the Superman character. The same is generally true with NFT identified items - but not always.

Intellectual Property Rights and NFTs

NFT identified items are often subject to one or more areas of IP. For example, digital artwork, a popular type of NFT identified item, is subject to copyright law. U.S. [copyright law](#) grants the copyright owner the exclusive right to copy the digital artwork, distribute copies of it, publicly display it, and make derivative works from it (i.e., new works based on, or incorporating all or some of the original artwork). Copyright owners can authorize or exclude others from exercising any of these rights.

Because the creation, selling, transfer, and use of NFTs for digital artwork involve and trigger these exclusive rights, NFT creators, sellers and buyers would be wise to understand them and the liability potential for violating them. The same is true for any NFTs involving other IP rights, such as trademark rights, design patent rights, or the right of publicity (protecting against the misappropriation of a person's name, likeness, and other indicia of personal identity).

Some Takeaways for NFT Creators, Seller, and Buyers

Among other things, NFT creators should work with a qualified lawyer to: (1) make sure the proper rights, licenses and permissions are first obtained before using any third-party IP in an NFT project; (2) obtain proper IP protection for the NFT creator's own content used in the NFT project; and (3) specify the terms and conditions under which the NFTs can be sold, transferred, used, etc. In some cases, the NFT minting and/or trading platform will have appropriate terms of service covering this, but not always.

NFT buyers and sellers should each understand and be clear about what is and is not being sold. When an NFT is purchased, only the NFT (the token identifying the associated item) and the associated item itself are typically included in the sale, unless the NFT creator explicitly states otherwise.

To avoid liability for false advertising and other possible legal claims, NFT sellers would be wise to state in writing what specific rights are and aren't transferred through the NFT sale. Whether or not the seller discloses these, NFT buyers would be wise to assume that no IP or other rights (beyond ownership of the token and identified item itself) convey with the

purchased NFT, until and unless they verify that the NFT creator's or trading platform's terms and conditions state otherwise.

Some NFT creators, like the NBA's Top Shot platform, are quite strict. Per the platform's terms of use (as of the March 10, 2021 update), purchasers of NBA video clips may not modify them, use them commercially, or even use them alongside certain types of objectionable content. In contrast, other NFT creators may grant robust rights with an NFT purchase. The creators of the Bored Ape Yacht Club NFTs, for example, grant the owner of each digital cartoon ape portrait the commercial rights to exploit each cartoon ape however they wish.

As with all new technologies, the law usually takes a while to catch up. With NFTs however, one or more areas of IP law usually apply, and they are already well developed. NFT creators, sellers and buyers would be wise to work with a qualified IP lawyer to ensure that their NFT projects and purchases don't end up in legal disputes.