

When NFTs Go to Market: Preventing Fraud and Theft of Digital Currency

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Discussion Points

Part 1: Know the Basics

Part 2: Know Your Business

Part 3: Identify Relevant Third-Party Stakeholders

Part 4: Educate the Relevant Customer Market


Part 5: Identify Civil Enforcement Methods

Part 6: Identify Relevant Law Enforcement Agencies

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Part 1

Know the Basics

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NFTs – What Are They?

NFT stands for “non-fungible token”

- Unique crypto-assets that reside on blockchain
 - A blockchain is a digital list of transactions that can be viewed and verified
- Distinct from “fungible” assets, like a dollar, as they cannot be swapped interchangeably
- Uniqueness allows for identification of ownership of digital assets like artwork and other collectables
- NFT owners do not receive a physical manifestation of their digital asset (e.g., no art print to hang on their wall)

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Image Credit: Bored Ape Yacht Club/Opensea – “Bored Ape Yacht Club”
Est. \$250,000



Image Credit: larvalabs.com – “CryptoPunks”
Est. \$1 Million

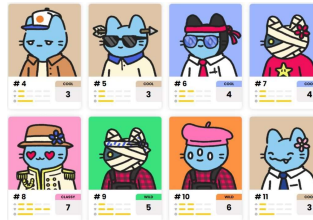


Image Credit: coolcatsnft.com – “Cool Cats”
Est. \$30,000

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How Do I Buy, Sell, and Store Them?

Specialized Marketplaces

- Zora
- Rarible
- Opensea

Specialized Crypto Currency

- Ethereum (ETH)
- Dai
- Bitcoin (BTC)
- Dogecoin (DOGE)
- Polkadot
- Tether
- Among many others...

CryptoWallet

- MetaMask
- Coibase Wallet
- Portis
- Among many others...

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Part 2

Know Your Business

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What IP Assets Are Owned?

Be Familiar with Company's Registered and Unregistered:

- Trademarks
- Trade Dress
- Copyrights

Different IP assets may provide different means of protection, obtaining redress, and preventing fraud from occurring while bringing NFTs to market

New Source Identifiers Can Create Additional Challenges

- Unlikely to obtain Federal Trademark Registration on short notice/expedited time period
- Less likely to have third parties to assist with enforcement issues with unregistered IP

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Identify Relevant URLs and Social Media Handles

- Be familiar with relevant URLs, and social media handles of your company and its NFT launch
- Secure any required URLs and social media handles prior to launch of NFTs
- Identify any URLs and/or social media handles guard against consumer confusion
 - Focus on URLs with the same gLTDs as that of your company website
 - Focus on URLs with slight misspellings of the URL of your company's main website or your company's website promoting the NFTs
- Bad actors may attempt to use confusingly similar URLs and social media handles to trick NFT consumers, as the product is offered entirely in the digital space

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Identify Relevant Points of Contact at the Company

Designate an in-house point of contact to collect information on any issues as they arise (e.g., consumer complaints)

- Individual should be familiar with the NFT launch;
- An in-house council; or
- Could be familiar with consumer satisfaction

Benefits of Designated Point of Contact

- Ensures that information is being collected in one place reducing the risk of omitting relevant facts in a fast-paced enforcement situation
- Quick communication with outside legal counsel in the event issues rise to a significant level will allow counsel to more quickly and effectively access potential remedies/take action in a fraud situation

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Part 3

Identify Relevant Third-Party Stakeholders

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What Platforms Are Implicated by the NFT Offering?

Identify what third-party platforms the Company may use to bring its NFT offering to market

- Social media platforms;
- The NFT marketplace(s);
- Digital wallets;
- Blogs promoting the NFT launch; etc.

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What Resources Do They Have Available?

Identify any internal processes the third party has put in place to remove infringing/violative conduct

- DMCA policies; trademark removal policies

Note if relevant third-parties have a means to readily contact them

- Phone number; general company email; legal department contact information

Consider pre-emptively reaching out to third parties if possible to ask if there are any steps or safeguards that your company can use on the third-party platform to limit fraudulent/scam activity

- Limiting comments; freezing repeat violators; limiting unsolicited direct messages

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Part 4

Educate the Relevant Customer Market

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Educate Consumers About Authentic NFT Offering Details

Take advantage of the Company's existing promotional and advertising platforms to lay out facts concerning authentic NFT offerings

- Link to official NFT website, stating that other websites are unauthorized;
- Link to official social media handles (if any) specifically related to the company's NFTs, with a note stating that other social media handles are unauthorized
- Provide information about basic steps in the company's NFT purchasing process

Use Well-known Authorized Channels of Communication to Alert Consumers to Known Scams (If Occurring)

- Main company website and main social media channels

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Part 5

Identify Civil Enforcement Methods

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Use IP Tools To Stop Scammers

15 U.S.C. 1114, 1116

- Infringement of a registered trademark allows for civil seizures of assets in certain situations and provides for injunctive relief
 - Could assist where scammers are using the company's trademarks without authorization as part of their scam (e.g., on a website or within a social media handle)
 - Would stop conduct quickly and could be a means of learning the extent of the company's injuries (monetarily)
 - Would need to meet various requirements for relief, and often must be accompanied by sworn declarations from the business detailing the infringing conduct and harm

ICANN Uniform Domain-Name Dispute-Resolution Program

- Concerns resolution of disputes regarding the registration of domain names
- Less expensive than full litigation
- Could allow the Company to obtain control of disputed domain relatively quickly

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Part 6

Identify Relevant Law Enforcement Agencies

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Communicate with Law Enforcement

Identify relevant law enforcement groups that could assist in investigating scammers criminally

- Local law electronic crimes tasks forces
- FBI Intellectual Property Rights Unit (<https://www.fbi.gov/contact-us/field-offices/field-offices>)
- Internet Crime Complaint Center (“IC3”) (www.ic3.gov)

Gather evidence of fraud/theft in easy-to-use package

- Include screenshots if available
- Consumer complaints if prevalent
- Assign monetary value to fraud/theft to the extent possible

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Questions?



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