

Monkey Business: Trademarking NFTs and What Lenders Need to Know

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The digital asset landscape took a leap forward this summer when the U.S. Court of Appeals for the Ninth Circuit confirmed^[1] that nonfungible tokens (NFTs) qualify for trademark protection under the Lanham Act.^[2] This decision, centered on the Bored Ape Yacht Club's collection of 10,000 distinctive digital ape NFTs, signals a new era for both intellectual property and secured lending.

For lenders, the ruling delivers crucial guidance: NFTs — whose market values range from a few dollars to tens of thousands — now qualify as trademark assets that may be used as collateral, provided they meet certain criteria. As NFTs continue to gain traction across industries, understanding how to secure interests in these digital assets is essential for anyone involved in lending and finance.

Practical Guidance for Secured Lenders

- Lenders may treat NFTs as trademark assets if the NFTs function as source identifiers.
- The process for creating and perfecting security interests in NFT trademarks mirrors that for traditional trademarks: a security agreement, a UCC-1 filing, and an optional filing with the U.S. Patent and Trademark Office (USPTO).
- Lenders should conduct due diligence to confirm the NFT's trademark status and market value.

Case Summary

NFTs are digital assets that consist of a unique authenticating software code and a perceptible component, such as a digital artwork. The software code gives the perceptible component a unique signature, creating scarcity and value. An NFT may also identify brands and services. This duality allows NFTs to hold multiple sources of value, as art and advertisement.

Yuga Labs, the creator of the Bored Ape Yacht Club (BAYC) NFT collection, sold digital ape portraits that granted buyers exclusive access to online and offline events. Ryder Ripps, an artist, created a separate NFT collection by copying the Bored Ape images and branding in an act of artistic defiance.

Yuga Labs sued Ripps for trademark infringement, arguing that Ripps' NFTs used BAYC's marks and images in a way that may confuse consumers. Ripps countered that NFTs are not "goods" under the Lanham Act and therefore cannot be protected by trademark law.

The court rejected Ripps' argument, holding that NFTs are commercial products and function as source-identifying goods under the Lanham Act. The court found that trademark protection extended to digital assets like NFTs, and that the use of BAYC marks in Ripps' project was not protected by fair use or the First Amendment. The appeals court later ruled that Yuga Labs must provide more evidence of consumer confusion to prevail on its infringement claim, sending the case back for further proceedings.

Taking Security Over NFTs as Trademarks

The creation and perfection of security interests in NFTs under the Lanham Act is similar to the process for traditional trademarks. Before securing an interest in any NFT, the lender should determine that the NFTs function as trademarks. The court in *Yuga Labs v. Ripps* held that NFTs function as trademarks when used to identify the source of digital goods or services.

1. Creation of a Security Interest

The creation of the security interest is governed by state law, specifically Article 9 of the Uniform Commercial Code (UCC), which treats trademarks as "general intangibles" for the purposes of secured transactions. Lenders may take a security interest in NFTs (as trademark assets) by entering into a security agreement with the debtor. The debtor must execute the agreement to create a valid security interest under UCC §9-203.

UCC §9-108 requires that the security agreement contain a description that reasonably identifies the trademark being secured. In the case of NFTs, a description of the perceptible component and, if registered with the USPTO, the registration number will sufficiently identify an NFT. Lenders may want to include the registration date, application number, and the underlying software code. For an unregistered NFT, it is important to provide a thorough description including a copy of the perceptible component, the source code and any other identifying features.

2. Perfection of a Security Interest

The Lanham Act provides a system for recording trademark assignments with the USPTO, which gives constructive notice to subsequent purchasers. The Lanham Act, however, does not preempt state law regarding perfection of security interests, which is governed by Article 9 of the UCC.

To perfect a security interest in an NFT, the secured party must file a UCC-1 financing statement with the secretary of state in the jurisdiction where the debtor is located. Courts have consistently held that filing with the USPTO is not required to perfect a security interest in a trademark; the UCC filing is sufficient for priority over other creditors.^[3]

While not legally required for perfection, best practice is to also record the security interest in the NFT with the USPTO. This will provide additional notice to third parties and purchasers, especially in due diligence scenarios. This "belt and suspenders" approach does not substitute for the UCC filing.

Conclusion

While NFTs, cryptocurrencies, and other digital assets continue to generate debate, their status as valuable assets is well established. In light of recent judicial decisions, secured lenders should evaluate the benefits of taking security interests in a borrower's NFTs, particularly when those NFTs function as trademarks. This approach may enhance the lender's collateral position and provide additional protection in secured transactions.

[1] *Yuga Labs, Inc. v. Ripps*, 144 F.4th 1137 (9th Cir. 2025).

[2] 15 U.S.C. § 1060.

[3] See *In re Roman Cleanser*, 43 Bankr. 940, 225 U.S.P.Q. 140 (Bankr. E.D. Mich. 1984).

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