

New Technologies and Impact on IP and Brand Protection

Metaverse, NFTs, and Virtual Goods

Key Terms

Blockchain: A public digital ledger of transactions, distributed across a network of computer systems on a chain of blocks of code.



Key Terms

Non-Fungible Token (NFT):

Cryptographic asset with unique identification codes, which are bought, sold and traded on a blockchain.



Key Terms

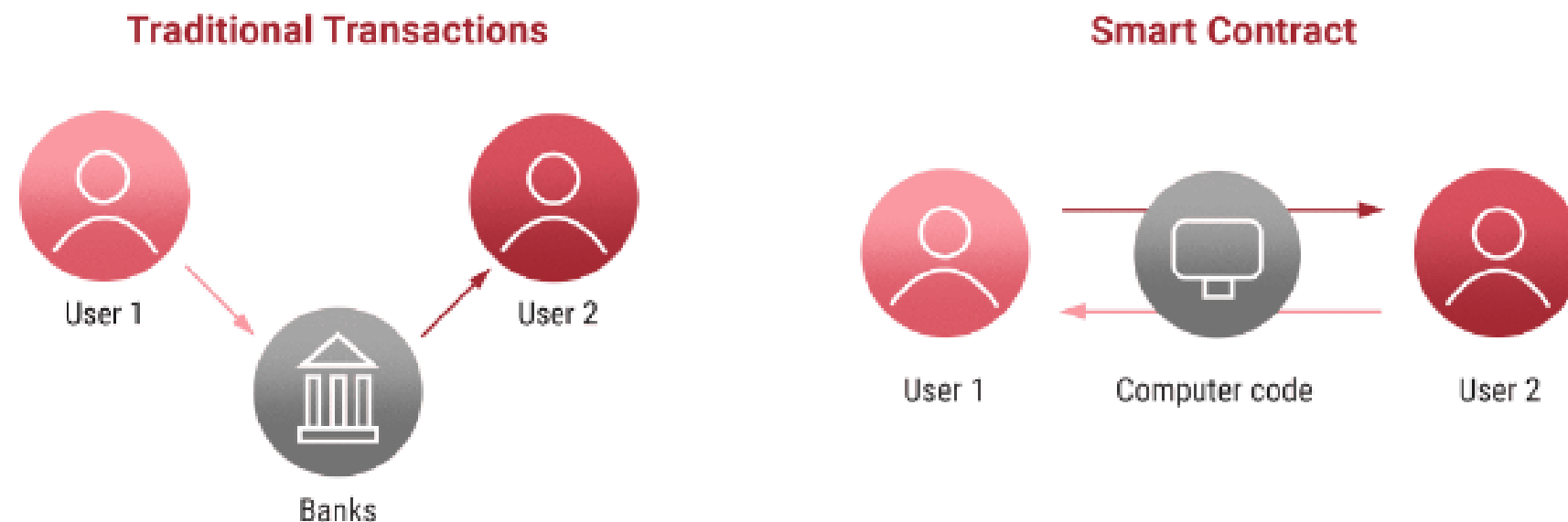
Cryptocurrency: a digital currency that does not rely on any kind of central authority to maintain its value. Can be minted for use on a blockchain, but can also be swapped, bought or sold across blockchains.



Key Terms

Smart Contract: refers to a computer code that is also stored on the blockchain and that, among other things, determines the name of each of the NFTs, constrains how they can be sold or transferred, and controls which digital files are associated with each of the NFTs.

How Smart Contracts Work?



Key Terms

Minting: the process of publishing your NFT on the blockchain.

What do you need to mint?

1. unique digital asset
2. tokens to pay transaction fees
3. non-custodial hot wallet
4. NFT marketplace



Key Terms

Blockchain-based Domains (BDNs)

- domain names that operate and are stored in a decentralized network or a blockchain.
- purchased from service providers, such as Unstoppable Domains or Ethereum Name Service (ENS)

NFT Enforcement

Popular NFT Marketplaces



OpenSea

LOOKSRARE 



MINTABLE

SuperRare




Rarible







Decentraland

OpenSea - Sample Listing





Search items, collections, and accounts


[Drops](#) [Stats](#) [Resources](#)   



33








[Bored Ape Yacht Club](#) 

#3055

Owned by [franklinisbored](#)

 3.3K views  33 favorites  PFPs

Sale ends March 30, 2023 at 5:43 AM

02
Days

21
Hours


23
Minutes


05
Seconds


Current price


61.4999 ETH \$108,701.69

Add to cart




 Make offer

 Price History



OpenSea Takedown Procedure

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☐ Buying and Selling NFTs

☐ Creating Items & Collections

☐ Developing & API

☐ Bugs, Errors and Product Suggestions

☒ Fraudulent Activity and Other Safety & Security Concerns

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Your email address *

What can we help with? *

Report an intellectual property claim ▼

What would you like to do? *

Report content that uses my business' trademarked nam... ▼

We will forward your takedown request and contact information to the party who will have their content removed so they understand why it is no longer available on OpenSea and can also contact you to resolve any dispute

Is this what you are looking for?

What can I do if my copyrighted works are being sold without my permission?

Content that infringes on the intellectual property rights of other individuals, including copyright, may be removed for violating our [Terms of Service](#).

Pursuant to the Digital Millennium Copyright Act (DMCA), OpenSea maintains a notice and takedown process for alleged copyright infringement. In accordance with this U.S. federal law. OpenSea allows users to report content if they

<https://support.opensea.io/hc/en-us>

Five Steps for Protecting Your Brand's Trademarks in the Metaverse

1. File a trademark application for your digital goods.
2. Conduct a survey across the NFT marketplaces for both NFTs and BDNs.
3. Develop take down strategy.
4. Conduct further investigation into problematic sellers.
5. Continue to monitor seller activity and develop legal strategy.

Conducting Investigations

- NFT sellers communicate with potential buyers through the following platforms: Twitter, Discord and Telegram.
- Etherscan allows you to explore and search the Ethereum blockchain for transactions, addresses, tokens, prices and other activities taking place on Ethereum.
- NFT sellers usually register a website and allow you to download their white paper.

Blockchain-based Domains

Blockchain-based Domains - Overview

- BDNs can be registered through service providers such as Ethereum Name Service, Unstoppable Domains and Handshake.
- Endings include .bitcoin, .crypto, .nft., .wallet, etc.
- BDNs are listed for sale on NFT Marketplaces, even if the seller does not actually own them.
- In addition to being linked to cryptowallets, BDNs can be used as addresses for decentralized websites or to build applications.
- Reasons to be cautious: Name Collision & Burning.

BDN Example - Ethereum Name Service

nike.eth

Register

Details

Subdomains

PARENT

eth

REGISTRANT

0x02ECA8cC78b7D30c1Ac

Transfer

CONTROLLER

0xC3bAA0FA5f21Af01575

Transfer

EXPIRATION DATE

2042.10.22 at 17:11 (UTC-04:00)

Remind Me

ADVANCED SETTINGS

BDN Example - Unstoppable Domains

The screenshot displays the Unstoppable Domains website interface. At the top, the navigation bar includes the logo, links for Domains, Partners, Learn, Build, and Merch, a search bar, and icons for a link, heart, and shopping cart. The main search bar contains the text 'nike.crypto' and a blue search button. Below the search bar, there is a link to 'Try AI Search' and a section titled 'Endings for "nike"'. This section features a list of domain endings: 'nike.crypto', 'nike.nft', 'nike.wallet', 'nike.blockchain', 'nike.x', and 'nike.polygon'. Each entry is marked as 'Protected' and includes a heart icon and an 'Add to Cart' button. To the right of the list, there are two buttons: 'Results' and 'All endings'. Further right, a 'Your cart' section shows '0' items and a 'Continue to Cart' button. Below this, a message states: 'The final price will be calculated in the cart, to account for possible discounts and credits.' At the bottom right, a note with a smiley face icon says: 'All domain purchases are a one-time payment. Unstoppable Domains have no renewal fees.'

Domain	Status	Action
nike.crypto	Protected	Add to Cart
nike.nft	Protected	Add to Cart
nike.wallet	Protected	Add to Cart
nike.blockchain	Protected	Add to Cart
nike.x	Protected	Add to Cart
nike.polygon		Add to Cart

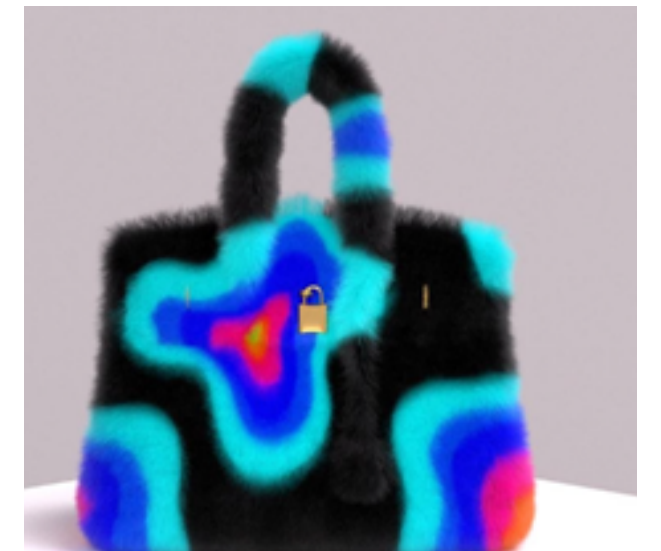
Case Law Developments

Case Law Developments

Hermes International v. Rothschild

- Defendant advertised and sold NFTs using the mark MetaBirkins. These virtual works resembled Birkin handbags with faux fur.
- Defendant asserted First Amendment defense.
- In February 2022, jury found defendant liable for trademark infringement, and other claims.
- Appeal pending.

See also Jack Daniels v. VIP Products



Case Law Developments

Nike, Inc. v. StockX

- Defendant StockX operates an ecommerce platform on which users resell a variety of goods. Defendant began to offer for sale NFTs that correspond to physical products including Nike sneakers, and claim the shoes are stored in a "vault".
- Nike filed a lawsuit and brought claims for trademark infringement, etc. In its First Amended Complaint, Nike alleged that it obtained 4 pairs of counterfeit sneakers through StockX's authentication program and asserted a claim for counterfeiting.





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