

9th Circ. Finding That NFTs Are Goods Will Change TM Law

By **Adam Bialek and Taylor Bialek** (September 2, 2025)

In a significant decision from the U.S. Court of Appeals for the Ninth Circuit, nonfungible tokens have been formally recognized as goods under U.S. trademark law. The July 23 ruling in *Yuga Labs Inc. v. Ripps* marks a pivotal step in extending intellectual property protections into the digital realm, reinforcing the rights of brand owners and creators in increasingly virtual marketplaces.

While the Ninth Circuit's decision establishes that NFTs can be subject to trademark protection, the court stopped short of finding that there was infringement in the subject case. This ruling, however, reflects how the law and court interpretations must be flexible to address rapidly evolving technologies and digital assets that do not fit squarely within prior precedent or traditional structures.

The Ninth Circuit's Opinion

On July 23, the Ninth Circuit overturned a \$9 million NFT trademark judgment against Ryder Ripps, an artist behind a copycat NFT, citing a lack of consumer confusion with Yuga Labs' Bored Ape NFTs. But the court significantly upheld the view that NFTs are goods entitled to trademark protection.

Overview of the Initial Claims

In 2022, Yuga Labs, the creator of the Bored Ape Yacht Club, or BAYC, a high-profile NFT collection, sued Ripps, a conceptual artist, and Jeremy Cahen, who launched a copycat NFT project known as RR/BAYC as a satirical and critical commentary on Yuga Labs. The suit was brought in the U.S. District Court for the Central District of California.

The BAYC is one of the most widely recognized NFT collections. The court noted that there are 10,000 NFTs in the BAYC collection, each featuring an original work of art depicting a cartoon Bored Ape, examples of which are shown below.



Images of Bored Ape Yacht Club (BAYC) NFTs created by Yuga Labs



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Purchasers of these NFTs obtain not only rights to the ape art, but also membership in what has been described as a "strange combination of gated online community, stock-shareholding group, and art-appreciation society," according to the Ninth Circuit's decision.

As the Bored Ape NFTs developed a following, Ripps took notice and created "a nearly identical NFT collection called 'Ryder Ripps Bored Ape Yacht Club.'"

Ripps then created a website, rrbayc.com, to promote and sell RR/BAYC NFTs. The website provided the following artist statement for potential buyers:

By purchasing this Ryder Ripps artwork in the form of an NFT, you understand that this is a new mint of BAYC imagery, re-contextualizing it for educational purposes, as protest and satirical commentary. You cannot copy an NFT. Please see the RR/BAYC contract here to verify provenance. ... By reserving your RR/BAYC, you are purchasing a hold for an order that will be fulfilled or rejected/refunded by Ryder within 24h (Depending on the vibe of your wallet and the mood of Ryder at the time).

Yuga Labs sued Ripps in June 2022, asserting 11 federal and state claims, significantly alleging trademark infringement, and claiming that Ripps created and sold NFTs that allegedly used BAYC marks and imagery to mislead consumers into thinking the RR/BAYC project was affiliated with Yuga Labs.

Yuga Labs also brought claims for false designation of origin, asserting that Ripps was "passing off" the NFTs as genuine BAYC NFTs, leading to the dilution of the Yuga Labs brand. The suit additionally included claims for cybersquatting and unfair competition, alleging bad faith domain registration and deceptive marketing practices.

In response, Ripps argued that the project was both satirical and critical, and, as such, receives protection under the First Amendment for nominative fair use as a form of artistic and/or political expression. Ripps further argued that there was no likelihood of consumer confusion. Significantly, Ripps argued that Yuga Labs "does not have enforceable trademark rights."

In March 2023, Yuga Labs moved for summary judgment on its false-designation-of-origin and cybersquatting claims, as well as on Ripps' defenses and Digital Millennium Copyright Act counterclaim. In April 2023, the Central District of California granted summary judgment in favor of Yuga Labs with respect to the trademark claims, finding that there was no genuine dispute that the RR/BAYC NFTs were likely to cause consumer confusion — the district court "easily [concluded] that Defendants' use of Yuga's BAYC Marks was likely to cause confusion."

The court further rejected Ripps' defenses claiming First Amendment protection and fair use. After a bench trial on remedies, the district court enjoined Ripps from marketing, promoting or selling products that use the BAYC marks, and awarded Yuga Labs nearly \$9 million in damages for disgorged profits from RR/BAYC sales, in addition to statutory damages, attorney fees and costs.

Importantly, the Central District of California's decision found that NFTs are subject to traditional trademark laws.

Overview of the Ninth Circuit's Opinion

Ripps and Cahen appealed the ruling from the Central District of California. While the Ninth

Circuit affirmed that an NFT is a good and thus subject to trademark protection, it found that the district court went too far and that Yuga Labs did not prove as a matter of law that Ripps' actions were likely to cause confusion.

As for the trademark claim, the Ninth Circuit performed an analysis with the eight-factor test derived from its 1979 decision in *AMF Inc. v. Sleekcraft Boats* for likelihood of confusion to determine whether the RR/BAYC's marks were likely to cause confusion:

(1) strength of the mark; (2) proximity of the goods; (3) similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) type of goods and the degree of care likely to be exercised by the purchaser; (7) defendant's intent in selecting the mark; and (8) likelihood of expansion of the product lines.

The court concluded that some of the factors indicated a likelihood of confusion, some did not and some were neutral. Thus, the court "could not conclude as a matter of law that a reasonably prudent consumer in the marketplace was likely to be confused as to the origin of the goods bearing Yuga's marks."

The Ninth Circuit answered the question, "Are NFTs protected by the Lanham Act?" Ripps argued that Yuga Labs' trademark claim failed because an NFT is not a good under the Lanham Act. The court found that this argument was not persuasive, noting that the U.S. Patent and Trademark Office concluded that NFTs are goods covered by the Lanham Act, citing a March 2024 report, "Non-Fungible Tokens and Intellectual Property: A Report to Congress."

The court noted that in its report, the USPTO explained:

Trademarks perform the same functions in NFT markets as they do in other markets: They identify the source of goods and services and distinguish the goods and services of one party from those of others. For example, trademarks can be used to indicate the source of underlying assets associated with NFTs, such as digital art, video clips of iconic sports moments, or physical shoes. Trademarks can also indicate the source of services, such as unique entertainment experiences or club memberships, access to which is represented by NFTs.

The court recognized that technology has advanced beyond the law by acknowledging that prior case law dealing with intangible property was not applicable, because, as here, "NFTs are not contained in or even associated with tangible goods that are sold in the marketplace. NFTs exist only in the digital world, and they are associated only with digital files. NFTs are marketed and actively traded in commerce."

Moreover, according to the court, "consumers purchase NFTs as commercial goods in online marketplaces specifically curated for NFTs." The court reasoned that "customers experience the BAYC NFTs as more than a digital deed to or authentication of artwork. BAYC NFTs also function as membership passes, providing 'Ape holders' with exclusive access to online and offline social clubs, branded merchandise, interactive digital spaces, and celebrity events."

As such, the court concluded that Yuga Labs' NFTs are goods.

The Impact of the Ninth Circuit's Opinion on the Legal Landscape

The Legal Presumption Prior to Yuga Labs

Prior to the Ninth Circuit's ruling in July, the legal status of NFTs under federal trademark law was widely uncertain and unsettled — there was no judicial consensus as to whether NFTs qualified as goods or services under the Lanham Act. It was widely debated whether NFTs are goods in commerce and whether NFTs were coded expressions.

The debate concerning the classification of NFTs as goods in commerce considered that NFTs are digital yet intangible. As such, courts and scholars questioned whether NFTs could be goods used in interstate commerce, a requirement under the Lanham Act to receive trademark protection.

In addition to questioning the applicability of trademark law, arguments were made that NFTs were digital files that displayed expressions of art and therefore were more appropriately protected under copyright doctrines.

What the Ninth Circuit Changed

The Ninth Circuit's ruling is the first binding appellate precedent affirming that NFTs are goods under the Lanham Act and confirming that NFT creators can pursue trademark protection if their NFTs function as source identifiers in commerce.

The decision clarifies the rights of NFT creators and establishes a standard for future disputes concerning the legal protection of the intellectual property of digital assets similar to that of physical merchandise.

Future Considerations and Key Takeaways

The Ninth Circuit's ruling in the Yuga Labs case emphasizes the tension over NFTs between artistic expression and trademark enforcement. The decision further establishes a legal precedent over the intellectual property rights of NFTs and highlights the need for more fact-intensive analyses in digital asset disputes.

The Ninth Circuit's decision classified NFTs as goods based on the particular facts of the Yuga Labs case, but this is not yet a universal rule and other cases could create uncertainty. However, the Ninth Circuit clearly has staked out its position.

NFTs can also be treated as services in situations where they function primarily as access credentials for memberships, subscriptions or other service-based offerings. The legal classification of NFTs depends on their actual use and context, so future cases may recognize NFTs as services rather than goods when their main purpose is to provide entry to experiences or benefits rather than an expression of art. The key focus is that NFTs can be protectable trademarks.

This new legal precedent is likely to influence future intellectual property enforcement and marketplace policies regarding digital assets. The Ninth Circuit's ruling establishes that NFTs have real, commercial value under U.S. federal trademark law.

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