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KEY TAKEAWAYS

NFTs Demystified: Where We Are and Where We're Going

Kilpatrick Townsend's Rob Potter recently spoke at the Federal Bar Association's IP Law Fall Conference 2022 on the topic of **"NFTs Demystified: Where We Are and Where We're Going."** As Non-Fungible Tokens (NFTs) become less a passing fad and more a practical tool for business and communication, IP practitioners will need to be (at least) generally familiar with the tech, the background, and the significant potential surrounding NFTs. Mr. Potter's presentation provided an overview of NFTs related to trademark and copyright law. He explored the current types and uses, the potential benefits to businesses and brand owners, and the legal issues and litigations NFTs have already created. Mr. Potter offered a possible sneak peek of the future in a world where NFTs are ubiquitous in the metaverse and in real life and the most appropriate legal regimes to govern these novel IP issues.

Five key takeaways from the presentation include:

1. NFTs have many valuable use cases beyond digital art and collectables and will likely be ubiquitous in the future to provide authenticity and tracing for digital and physical goods of all types. They are also likely to be used for ticketing and proof of attendance, brand loyalty programs, service of process, real estate transactions, and potentially even voting.

2. While NFTs are new, the relevant IP laws are not (at least not yet). Nonetheless, traditional IP doctrines seem adequate to craft appropriate licenses and enforce against infringement. Enforcement will become more difficult, however, with the rise of decentralized domains and/or websites with no central authority.

3. Many brands are beginning to offer brand-specific NFTs within a closed environment, many of which have no value independent of the environment, and cannot be traded on other marketplaces.

4. As NFTs are becoming increasingly available through credit card purchase instead of cryptocurrency—and as the term NFT is increasingly replaced by "digital asset" or "digital collectible"—the barrier to entry is reducing and the purchase and sale of NFTs (under any name) will become mainstream in the near future.

5. Brands may wish to wait to offer NFTs unless and until a meaningful percentage of their most loyal customers become familiar and comfortable with the technology.

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