



Law360 Interviews Michael Justus on Trademark Protection for Non-Fungible Tokens

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In an article highlighting several questions regarding the intellectual property implications of non-fungible tokens (NFTs), *Law360* spoke with Intellectual Property Partner Michael Justus about the need for administrative guidance on NFT-related trademark applications. Mike was among several interviewed attorneys who identified issues that they are hoping will be addressed in a joint study launched by the US Patent and Trademark Office (USPTO) and the US Copyright Office.

The two agencies recently announced that they are examining the scope of intellectual property rights in connection with the digital asset class of NFTs. The agencies' announcement followed a request from two senators – Patrick Leahy (D-VT) and Thom Tillis (R-NC) – who sought a study addressing several IP-related questions surrounding NFTs.

Outlining five leading questions on attorneys' minds, *Law360* noted that one issue is "how should attorneys handle NFT-related [trademark] applications?" Mike noted that it would be helpful for the USPTO to issue guidance on how it will apply the "bona fide intent to use" requirement under the Lanham Act to trademark applications covering NFT-related products and services.

Mike explained that the Lanham Act requires trademark applicants to demonstrate actual use of the mark – or a bona fide intent to use the mark for the covered goods or services. For intent-to-use trademark applications, third-party challenges can void such applications and resulting registrations if there is a lack of bona fide intent to use the mark.

"Given the 'gold rush' of NFT trademark filings, and the novelty and unique challenges of entering the NFT ecosystem, it seems likely that intent-to-use challenges will follow," Mike told *Law360*. "It would be helpful for the USPTO to clarify the evidentiary standards that it will apply to such challenges."

["5 Top NFT Questions Attys Want IP Agencies to Explore,"](#) *Law360*, August 16, 2022

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