ONE MINUTE READ

TRADEMARK

NON FUNGIBLE TOKENS AND INTELLECTUAL PROPERTY RIGHTS

What is a Non Fungible Token ?

Non Fungible Token is a form of cryptocurrency which is distinct from other cryptocurrencies and cannot be replaced. They have unique identifying codes and metadata that distinguishes them from each other. For Example, we can replace one INR 500/- note with ten INR 50/- notes, or five INR 100/- notes, thus making it replaceable or "fungible". However, a painting drawn by Leonardo da Vinci cannot be replaced by a painting by Picasso because these are unique works and therefore cannot be replaced. This concept of uniqueness linked to the Non Fungible Tokens is the biggest reason why it is so closely attached with the intellectual property laws.

Copyrights and Ownership in NFT

When someone buys an Non Fungible Token, they only get ownership of the specific copy of the Non Fungible Token in the form of a cryptographically signed receipt. In the case of copyright, ownership of the underlying rights will only transfer if the creator of the original work expressly agrees to transfer those rights to the Non Fungible Token owner. Depending on the circumstances of the transfer, an Non Fungible Token owner may be prohibited from reproducing, sharing copies, publicly performing, exhibiting, or creating derivatives of the original asset.

When a customer acquires an Non Fungible Token that corresponds to creative work, they receive a copy of the underlying work (in some digital format, such as.jpeg,.pdf, or.mp4) as well as the Non Fungible Token itself, i.e., tokens. Since it entails copying the creative work and sending it to the customer, any unauthorized reproduction, distribution, or adaptation of an Non Fungible Token may be considered copyright infringement.

Patent and Non Fungible Tokens

Patents allow an Non Fungible Token blockchain owner to licence the technology they use for their Non Fungible Token and allow consumers to own genuine collectibles of the brand. Nike, for example, owns a patent for creating 'cryptographic digital assets for footwear' which allows consumers to guarantee the authenticity of the purchased product while also having a digital collectible version of their shoe in their wallet (Cryptokicks). However, it is important to note that the patented invention must be novel and eligible for patent protection.

Trademarks and Non Fungible Tokens

When a businessperson attempts to mint an Non Fungible Token for an underlying asset, his first and foremost strategy is to be distinct in the market. Trademark infringement occurs when an unauthorized or competing party attempts to mint, sell, or resell that Non Fungible Token using the asset owner's registered trademarks without the asset owner's permission.

Non Fungible Tokens present a plethora of opportunities as well as potential risks. The terms of sale of the Non Fungible Token and/or the smart contract encoded in the Non Fungible Token should clearly define what is permitted and what is not with regard to Intellectual Property rights, allowing a business to control and monetise its Intellectual Property.

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