

## Nike Sues StockX over Authentication and NFT Concerns

For some, nothing compares to getting the latest Air Jordan 1 Retro, or Travis Scott x Nike collaboration. The hype surrounding certain sneakers, brands, and styles has consumers waiting in line for hours, or creating multiple profiles on the SNKRS app (Nike's shoe app) just to try and get their hands on the latest sneaker drop. The rise of social media has only fueled the hype around collectible sneakers as consumers are eager to post their success of "copping" the latest sought after shoe for the world to see.<sup>1</sup> Before the creation of online platform apps, consumers would wait in line for hours or try to stay informed about where and when the latest sneaker drop was going to take place.<sup>2</sup> When a consumer misses out on the opportunity to get a sneaker directly through the retailer or manufacturer at retail price, many would turn to third party markets/ sellers like e-bay in order to purchase the shoes aftermarket.<sup>3</sup> Unfortunately, there are certain authentication risks associated with purchasing sneakers from a third party since it can be difficult to determine if the sneakers you are buying are in fact authentic/real.<sup>4</sup>

The creation of StockX helped alleviate these concerns for consumers. StockX acts as a stock market for hype items like sneakers, clothing, and other goods that are in high demand.<sup>5</sup> A consumer can go on StockX and purchase a pair of sneakers through a third party for an increased price, based on what the demand is at that given time.<sup>6</sup> After a consumer purchases the item, the item is shipped to StockX for authentication from the seller before it is officially sent to the purchaser.<sup>7</sup> This way, the consumer doesn't have to worry about if the product they are purchasing is a counterfeit. Additionally, StockX has allowed for consumers to safely re-sell their products on the site. A consumer can purchase a pair of sneakers at retail price and sell them on StockX for an increased price without having to interact with the buyer at all and without worrying about receiving a payout for the item they are selling.<sup>8</sup> Sneakerheads taking part in the re-sell of hype items can make thousands of dollars. For example, the Nike Air Force 1 Low Off-White Brooklyn was originally released on the SNKRS app for \$160.<sup>9</sup> Currently, the shoe is selling on StockX for around \$1,500 depending on your size.<sup>10</sup> Therefore, a lucky consumer who was able to purchase the shoe at retail for \$160 could potentially make more than a \$1,200 dollar profit by selling one pair of sneakers on StockX.

Further, StockX decided to increase its online presence in the sneaker world by offering NFTs.<sup>11</sup> NFTs are non-fungible tokens that are unique, one-time trading cards allowing

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<sup>1</sup> Rae Witte, *How StockX became the stock market of hype* (Apr. 5, 2021, 11:01am), <https://techcrunch.com/2021/04/05/stockx-ecl-origin/>

<sup>2</sup> *Id.*

<sup>3</sup> Amir Ismael, *StockX is a sneaker resale startup that makes sure you don't get scammed when buying collectible shoes online – here's how it works* (June 4, 2020), <https://www.insider.com/guides/style/how-stockx-works-service-review>

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> StockX, <https://stockx.com/help/articles/What-is-StockX>, (last visited Oct. 2 2022)

<sup>9</sup> StockX, <https://stockx.com/nike-air-force-1-low-off-white-light-green-spark?country=US&currencyCode=USD&size=10> (last visited Oct. 2 2022)

<sup>10</sup> *Id.*

<sup>11</sup> Dennis, *NFTs on StockX* (Jan. 20, 2022), <https://www.grailify.com/en/nfts-on-stockx/>

consumers to purchase items online while decreasing the risks of fraud.<sup>12</sup> NFTs “are an exciting way for brands to interact with their consumers in and out of the “metaverse.””<sup>13</sup> On January 18, 2022, StockX dropped a total of eight NFTs calling them “Vault NFTs” that are linked to highly sought-after sneakers.<sup>14</sup> StockX exclaims that Vault NFTs provide their customers with an exciting new, faster, cheaper and more efficient trading experience.<sup>15</sup> Since each NFT vault is tied to a physical product already stored in the StockX vault, you no longer have to wait several days before you can resell, and you do not have to pay fees associated with multiple legs of shipping and authentication.<sup>16</sup> If you decide you are ready to take possession of the physical product, you can simply redeem your Vault NFT and StockX will deliver the product straight to your door.<sup>17</sup>

Recently, StockX has gotten in hot water with Nike over authentication concerns StockX promises to its customers and their use of NFTs.<sup>18</sup> Nike argues that StockX has used Nike items to promote its own brand and that “StockX has chosen to compete in the NFT market not by taking the time to develop its own intellectual property rights, but rather by blatantly freeriding, almost exclusively, on the back of Nike’s famous trademarks and associated goodwill.”<sup>19</sup> Unlike StockX’s e-commerce business, which caters to buyers and sellers of goods originating from various companies, nearly all the NFTs promoted by the company are Nike- branded NFTs, yet none of those NFTs originate from Nike.<sup>20</sup> Nike has recently amped up its battle with StockX by amending its original complaint to include arguments against StockX’s sneaker authentication process.<sup>21</sup> Despite StockX’s authentication guarantees, Nike argues they were able to purchase clearly counterfeit sneakers from the site.<sup>22</sup> StockX defends its authentication process by reiterating the strict protocols the company uses to ensure customers are receiving the items they are purchasing on the site.<sup>23</sup> By amending its original complaint, Nike has threatened the core of StockX’s business model and overall foundation. If Nike can successfully show that StockX is unable to guarantee the authenticity of its products, consumers will lose faith in the online platform and turn to other resell sites like GOAT. As litigation between the two companies heats up, only time will tell who is able to prevail and how this lawsuit will affect the overall ever growing online sneaker market.

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<sup>12</sup> Robyn Conti, John Schmidt, *What Is An NFT? Non-Fungible Tokens Explained* (Apr 8, 2022, 8:36am), <https://www.forbes.com/advisor/investing/cryptocurrency/nft-non-fungible-token/>

<sup>13</sup> Complaint at 1, *Nike, Inc. v. StockX LLC*, Case No. 22-CV-983 (S.D.N.Y. 2022)

<sup>14</sup> Collect What’s Next: Introducing Vault NFTs on StockX, <https://stockx.com/lp/nfts/> (last visited Oct, 2, 2022)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Wynne Davis, What is StockX and why is Nike suing them? (May 12, 2022, 12:36pm), <https://www.npr.org/2022/05/12/1098426367/stockx-nike-lawsuit-sneakers>

<sup>19</sup> Complaint at 2, *Nike, Inc. v. StockX LLC*, Case No. 22-CV-983 (S.D.N.Y. 2022)

<sup>20</sup> *Id.*

<sup>21</sup> Wynne Davis, What is StockX and why is Nike suing them? (May 12, 2022, 12:36pm), <https://www.npr.org/2022/05/12/1098426367/stockx-nike-lawsuit-sneakers>

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

