

StockX Defends Authentication Process Amid Nike NFT Suit

By **Tiffany Hu**

Law360 (June 6, 2022, 9:22 PM EDT) -- Sneaker resale marketplace StockX on Monday staunchly defended its authentication program after Nike accused the online platform of selling counterfeit sneakers, telling a New York federal judge the reasoning behind the retailer's latest claims is "suspicious at best."

Last month, Nike asked for leave to include additional claims to its lawsuit accusing StockX of selling non-fungible tokens, or NFTs, that display the retail giant's sneaker designs without permission. Notably, Nike took aim at StockX's authentication process, alleging it has been able to purchase counterfeit Nike shoes "despite StockX's numerous guarantees of authenticity."

But in a filing Monday, StockX disputed Nike's characterization of its authentication program, saying it has invested millions into fighting counterfeits and has hired over 300 authenticators. StockX also said key executives for the retailer had also praised the platform's efforts in the past.

"Despite numerous opportunities to offer feedback or criticisms, at no time in the past did Nike express concerns to StockX about its authentication processes," StockX wrote. "The motive behind Nike's new-found litigation position is suspicious at best."

StockX added it was notable that Nike failed to explain how it was preventing counterfeits from being sold on other platforms like eBay and Amazon, suggesting it was being targeted as the "one platform that has now dared to stand up to Nike's meritless NFT infringement claims."

David H. Bernstein of Debevoise & Plimpton LLP, an attorney for StockX, told Law360 in an email Monday that Nike's counterfeiting accusations are a "desperate attempt to distract from its meritless challenge" to StockX's NFT collection, known as the Vault.

"Nike's made-for-litigation claims are particularly ironic given that Nike has praised StockX's authentication program and that its own executives regularly use StockX," Bernstein said. "We look forward to vindicating StockX's right to use NFTs as a claim ticket for shoes in its vault program and the authenticity of physical products sold through its marketplace."

Counsel for Nike declined to comment, citing its policy not to comment on pending litigation.

After StockX released its Vault NFTs in January, Nike accused the online platform of ripping off nine of its popular sneaker designs, allegedly banking on the retailer's popularity to boost sales. Nike has also

recently launched its own "MNLTH" and "CryptoKicks" NFT collections.

"Unless stopped, StockX's Vault NFTs and StockX's use of Nike's asserted marks will continue to confuse consumers in the marketplace and dilute Nike's famous marks by blurring and tarnishment," the retailer said in its complaint.

StockX contended it was not infringing because its Vault collection is like a "claim ticket" to actual sneakers that are authenticated and stored in its facilities. But in its bid for leave to amend its complaint, Nike said last month it was able to buy at least one shoe in the same style of an allegedly infringing Vault NFT, and sought to include counterfeiting and false advertising claims. The judge granted Nike's unopposed request on May 25.

The present case has taken an interesting turn with the companies' apparent focus on StockX's authentication process, according to a group of lawyers from Venable LLP. Rather than fighting Nike's motion — which might have been an "uphill battle" — StockX has opted to address the counterfeiting claims "head on," the group noted.

"As StockX itself acknowledges, its 'authentication and anti-counterfeiting efforts are critical to its business and consumer trust,' so, for better or for worse, the most critical part of StockX business model will now be front and center in this case," Justin E. Pierce wrote for the group.

The case also seems to be aimed at "clearing the field for Nike to launch and operate its own NFT marketplace without a competitive threat from StockX," which had launched its own collection first, according to Christopher A. Cole of Crowell & Moring LLP.

"While I don't doubt that Nike did in fact find a few counterfeits in the StockX inventory, it's not likely to be a substantial part of the competing sales," Cole told Law360 by email. "Thus, the motion for leave to amend is intended to give Nike an opportunity to supplement the record with evidence of confusion."

Nike is represented by Tamar Y. Duvdevani, Marc E. Miller and Jared Greenfield of DLA Piper.

StockX is represented by David H. Bernstein, Megan K. Bannigan, Jyotin Hamid, Justin C. Ferrone and Kathryn C. Saba of Debevoise & Plimpton LLP, J. David Mayberry and Rob N. Potter of Kilpatrick Townsend & Stockton LLP, and Jeffrey B. Morganroth of Morganroth & Morganroth PLLC.

The case is Nike Inc. v. StockX LLC, case number 1:22-cv-00983, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.