

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X		:
Yuga Labs, Inc.,		:
	Plaintiff,	:
		:
v.		:
		:
Thomas Lehman,		:
	Defendant.	:
		:
-----X		:

Case No. 1:23-CV-0085 (MAD/TWD)

**COMPLAINT FOR FALSE
DESIGNATION OF ORIGIN AND
CYBERSQUATTING**

DEMAND FOR JURY TRIAL

Plaintiff Yuga Labs, Inc. (“Yuga Labs”) for their Complaint against Thomas Lehman (“Lehman” or “Defendant”) alleges as follows:

NATURE OF THE CASE

1. Defendant Thomas Lehman is a central part of a business venture designed to explicitly mislead consumers into thinking that his and his accomplices’ knockoff non-fungible tokens (“NFTs”) are affiliated, sponsored, or associated with Yuga Labs. To further this scam, Lehman created and commercialized websites and a smart contract to sell the intentionally misleading RR/BAYC NFTs to the average consumer. Lehman and his accomplices used these tools to sell NFTs bearing the same images underlying Yuga Labs’ BAYC NFTs and using Yuga Labs’ same marks on the same marketplaces Yuga Labs’ NFTs are sold, as well as marketplaces where Yuga Labs’ NFTs had not yet been sold. This is textbook trademark infringement and explicitly misleading use of Yuga Labs’ marks.

2. Plaintiff Yuga Labs is the creator behind one of the world’s most well-known and successful NFT collections, known as the Bored Ape Yacht Club (a.k.a. “BAYC”). There are

only 10,000 BAYC NFTs in existence. The BAYC NFTs have earned significant attention from the media for their popularity, including being featured on the cover of *Rolling Stone* magazine.

3. In response to the Bored Ape Yacht Club's popularity, Ryder Ripps, a non-party to this action, started a business venture to sell "RR/BAYC" NFTs, which infringe Yuga Labs' trademarks and use the same art that Yuga Labs uses for its BAYC NFTs. Visually, the RR/BAYC NFTs are identical to the BAYC NFTs, using the same underlying digital images.

4. Ripps enlisted Lehman, as well as other non-parties Jeremy Cahen and Ryan Hickman (collectively, "the RR/BAYC Team"), to join his business venture and help him profit off of Yuga Labs' goodwill and trademarks by flooding the NFT market with their intentionally misleading copycat NFT collection using the original Bored Ape Yacht Club images and calling the NFTs "RR/BAYC" NFTs. Brazenly, the RR/BAYC Team promotes and sells these RR/BAYC NFTs using *the very same trademarks* that Yuga Labs uses to promote and sell authentic Bored Ape Yacht Club NFTs (BORED APE YACHT CLUB, BAYC, BORED APE, APE, BA YC Logo, BA YC BORED APE YACHT CLUB Logo, and Ape Skull Logo trademarks (the "BAYC Marks")). They also use the BAYC Marks to promote their coming "Ape Market" NFT marketplace (hosted at apemarket.com), which requires a person to purchase one of the infringing RR/BAYC NFTs to join Ape Market. Moreover, much of this promotion occurs through the same channels, such as Twitter, that Yuga Labs uses to promote its authentic BAYC NFTs. On information and belief, Lehman helped Ripps and Cahen promote RR/BAYC NFTs and Ape Market on social media, furthering sales of the infringing RR/BAYC NFTs. Lehman's actions are all a deliberate effort to harm Yuga Labs at the expense of consumers by sowing confusion about whether these RR/BAYC NFTs and Ape Market are in some way sponsored, affiliated, or connected to Yuga Labs' official Bored Ape Yacht Club, in violation of the Lanham Act.

5. Additionally, working with other members of the RR/BAYC Team, Lehman developed and coded an “RRBAYC RSVP Contract,” which would allow consumers to “reserve” an RR/BAYC NFT. Lehman also developed the “rrbayc.com” website, which implemented the RRBAYC RSVP Contract’s reservation system. And Lehman developed the Ape Market website on which the RR/BAYC Team planned to sell RR/BAYC NFTs alongside authentic BAYC NFTs.

6. Lehman, motivated by the financial windfall of appropriating Yuga Labs’ trademarks and the resulting confusion, also actively marketed and promoted the RR/BAYC NFTs. His actions were calculated, intentional, and willful with the stated purpose of causing actual and monetary harm to Yuga Labs, all of which causes real harm to Yuga Labs’ goodwill. Meanwhile, he reaped ill-gotten profit from these sales.

7. For these and other reasons, Lehman’s conduct has caused and, unless enjoined, will continue to cause damages and irreparable injury to Yuga Labs with an incalculable loss of goodwill. Accordingly, Yuga Labs seeks injunctive relief and a disgorgement of Lehman’s profits derived from his unlawful conduct.

THE PARTIES

8. Plaintiff Yuga Labs, Inc., is a corporation duly organized and existing under the laws of the State of Delaware.

9. Upon information and belief, Defendant Thomas Lehman is an individual whose primary place of residence is in Germantown, New York.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over Lehman because, on information and belief, his residence is in the State of New York and within this judicial district. Likewise, on information and belief, Lehman perpetrates his infringing activities from his New York residence.

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338, and 1367. Yuga Labs' claims are, in part, based on violations of the Lanham Act, as amended, 15 U.S.C. §§ 1051, *et seq.*

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). Lehman's primary place of residence is located in this district, and a substantial part of the events and injuries giving rise to the claims set forth herein occurred in this district.

FACTUAL BACKGROUND

YUGA LABS' BUSINESS AND MARKS

13. In early 2021, Yuga Labs created, and developed the smart contract behind, the Bored Ape Yacht Club, which consists of unique collectible works of digital art (each associated with an NFT) when executed on the Ethereum blockchain. Yuga Labs sold licenses for users to mint these BAYC NFTs for approximately 0.08 Ethereum each, which amounts to approximately \$169 to \$236 USD, based on the price of Ethereum at the time. Only 10,000 unique BAYC NFTs were created as part of this collection.

14. Once minted, a Bored Ape NFT confers on its holder certain commercial rights with respect to content featured on the NFT (here, digital art).

THE BORED APE YACHT CLUB'S RECOGNITION

15. Since its launch, Yuga Labs' Bored Ape Yacht Club has generated massive public interest, as reflected in media reports:

- Rolling Stone Magazine published an issue with Bored Ape NFT art on the cover, accompanied by an article entitled "How Four NFT Novices Created a Billion-Dollar Ecosystem of Cartoon Apes." The article hailed BAYC as "internet rock stars" and described their rise to fame and fortune. Samantha

Hisson, *How Four NFT Novices Created a Billion-Dollar Ecosystem of Cartoon Apes*, ROLLING STONE (Nov. 1, 2021),

<https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/>.

- CNET hailed BAYC as “the biggest NFT project of [its] kind.” Daniel Van Boom, *How Bored Ape Yacht Club NFTs Became \$400K Status Symbols*, CNET (Apr. 28, 2022), <https://www.cnet.com/culture/internet/how-bored-ape-yacht-club-nfts-became-400k-status-symbols/>.
- Wired published an article titled: “How Did the Bored Ape Yacht Club Get So Popular?” Kate Knibbs, *How Did the Bored Ape Yacht Club Get So Popular?*, WIRED (Feb. 8, 2022), <https://www.wired.com/story/celebrity-nfts/>.
- The New York Times called the Bored Ape Yacht Club a “widely-hyped series of digital collectibles” and a “phenomenon.” David Yaffe-Bellany, *Thefts, Fraud and Lawsuits at the World’s Biggest NFT Marketplace*, THE NEW YORK TIMES (June 6, 2022), <https://www.nytimes.com/2022/06/06/technology/nft-opensea-theft-fraud.html>.

16. The Bored Ape Yacht Club’s popularity is reflected in the value of BAYC NFTs. During a 2021 auction at Sotheby’s, 101 BAYC NFTs were resold for \$24.4 million. Samantha Hisson, *How Four NFT Novices Created a Billion-Dollar Ecosystem of Cartoon Apes*, ROLLING STONE (Nov. 1, 2021), <https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/>. A Christie’s auction sold an art collection including four BAYC NFTs for \$12 million. *Id.* Individual BAYC NFTs likewise sell for high prices, including one that went for \$3.4 million. *Id.* As a result of its success, Yuga Labs was valued at

\$4 billion in March of 2022, and received \$450 million in seed funding. Jacob Kastrenakes, *Bored Ape Yacht Club creator raises \$450 million to build an NFT metaverse*, THE VERGE (Mar. 22, 2022), <https://www.theverge.com/2022/3/22/22991272/yuga-labs-seed-funding-a16z-bored-ape-yacht-club-bayc-metaverse-other-side>.

17. Major brands like Adidas, Universal Music Group, and Arizona Iced Tea have worked with Bored Ape Yacht Club to create entertainment experiences, and in the case of Adidas, virtual and physical clothing.



YUGA LABS' TRADEMARK APPLICATIONS AND COMMON LAW TRADEMARK RIGHTS

18. Yuga Labs has used its BAYC Marks in connection with advertising, marketing, and promoting its products and services nationwide and internationally through multiple platforms, including but not limited to the Bored Ape Yacht Club website; NFT markets such as OpenSea; and social media such as Facebook, Instagram, and Twitter.

19. Yuga Labs has pending trademark applications for registration in BORED APE YACHT CLUB. The applications were filed on May 27, 2021; September 7, 2021; November 15, 2021; November 18, 2021; and March 15, 2022. The applications cover the BORED APE YACHT CLUB mark for “Digital collectibles in the nature of downloadable multimedia file containing digitally-created artwork authenticated by non-fungible tokens (NFTs); digital collectibles in the nature of downloadable image files containing artwork, memes, pictures, and trading cards authenticated by non-fungible tokens (NFTs);” “Online social networking services;” “providing an online marketplace for buyers and sellers of goods and services; providing an online marketplace for buyers and sellers of digital assets, digital tokens, crypto-tokens, utility tokens, non-fungible tokens (NFTs), digital collectibles, crypto-collectibles, cryptocurrencies, digital currencies and virtual currencies; providing an online marketplace for buyers and sellers of digital goods authenticated by non-fungible tokens (NFTs);” “creating an on-line community for registered users for the purpose of buying, selling, trading, and discussing and exchanging information about digital assets, digital tokens, crypto-tokens, utility tokens, non-fungible tokens (NFTs), digital collectibles, crypto-collectibles, cryptocurrencies, digital currencies and virtual currencies;” “downloadable image files containing artwork authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology;

downloadable digital art images authenticated by non-fungible tokens (NFTs);” and “Authentication and validation of data in the field of financial and digital transactions authenticated by non-fungible tokens (NFTs) using blockchain technology,” among others.

20. Yuga Labs has pending trademark applications for registration in BAYC. The applications were filed on July 19, 2021; November 15, 2021; November 18, 2021; and March 15, 2022. The applications cover the BAYC mark for “Digital collectibles in the nature of downloadable multimedia file containing digitally-created artwork authenticated by non-fungible tokens (NFTs); Digital collectibles in the nature of downloadable image files containing artwork, memes, pictures, and trading cards authenticated by non-fungible tokens (NFTs);” “Online social networking services;” “providing an online marketplace for buyers and sellers of goods and services; providing an online marketplace for buyers and sellers of digital assets, digital tokens, crypto-tokens, utility tokens, non-fungible tokens (NFTs), digital collectibles, crypto-collectibles, cryptocurrencies, digital currencies and virtual currencies; providing an online marketplace for buyers and sellers of digital goods authenticated by non-fungible tokens (NFTs);” “creating an on-line community for registered users for the purpose of buying, selling, trading, and discussing and exchanging information about digital assets, digital tokens, crypto-tokens, utility tokens, non-fungible tokens (NFTs), digital collectibles, crypto-collectibles, cryptocurrencies, digital currencies and virtual currencies;” “Authentication and validation of data in the field of financial and digital transactions authenticated by non-fungible tokens (NFTs) using blockchain technology,” among others.

21. Yuga Labs has pending trademark applications for registration in BORED APE. The applications were filed on August 16, 2021; November 15, 2021; and November 18, 2021. The applications cover the BORED APE mark for “online social networking services;”

“downloadable image files containing artwork authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs);” and “Authentication and validation of data in the field of financial and digital transactions authenticated by non-fungible tokens (NFTs) using blockchain technology,” among others.

22. Yuga Labs has pending trademark applications for registration in the BA YC Logo. The applications were filed on May 27, 2021; September 7, 2021; November 15, 2021; and November 18, 2021. The application covers the BA YC Logo mark for “Maintaining and recording ownership of art prints comprised of digital illustrations originating from photographs; Maintaining and recording ownership of downloadable digital illustrations authenticated by nonfungible tokens; Provision of an online marketplace for buyers and sellers of downloadable digital collectibles in the nature of artwork, memes, trading cards, pictures, movie clips, music videos, interviews, books, newsletters, magazines, music, podcasts, and soundbites authenticated by non-fungible tokens (NFTs);” “downloadable image files containing artwork authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens

(NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs);” and “Authentication and validation of data in the field of financial and digital transactions authenticated by non-fungible tokens (NFTs) using blockchain technology,” among others.

23. Yuga Labs has pending trademark applications for registration in the BA YC BORED APE YACHT CLUB Logo. The applications were filed on May 27, 2021; September 7, 2021; November 15, 2021; and November 18, 2021. The applications cover the BA YC BORED APE YACHT CLUB Logo mark for “Maintaining and recording ownership of art prints comprised of digital illustrations originating from photographs; Maintaining and recording ownership of downloadable digital illustrations authenticated by nonfungible tokens; Provision of an online marketplace for buyers and sellers of downloadable digital collectibles in the nature of artwork, memes, trading cards, pictures, movie clips, music videos, interviews, books, newsletters, magazines, music, podcasts, and soundbites authenticated by non-fungible tokens (NFTs);” “downloadable image files containing artwork authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs); downloadable digital art images authenticated by non-fungible tokens (NFTs);

downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs);” and “Authentication and validation of data in the field of financial and digital transactions authenticated by non-fungible tokens (NFTs) using blockchain technology,” among others.

24. Yuga Labs has pending trademark applications for registration in the Ape Skull Logo. The applications were filed on August 26, 2021; September 7, 2021; November 15, 2021; and November 18, 2021. The applications cover the BAYC mark for “Digital collectibles in the nature of downloadable multimedia file containing digitally-created artwork authenticated by non-fungible tokens (NFTs); Digital collectibles in the nature of downloadable image files containing artwork, memes, pictures, and trading cards authenticated by non-fungible tokens (NFTs);” “Online social networking services;” “downloadable image files containing artwork authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs); downloadable computer software for managing and conducting electronic transactions in the field of non-fungible tokens (NFTs); downloadable image and multimedia files containing digitally-generated artwork authenticated by non-fungible tokens (NFTs) utilizing blockchain technology; downloadable digital art images authenticated by non-fungible tokens (NFTs);” and “Authentication and validation of data in the field of financial and

digital transactions authenticated by non-fungible tokens (NFTs) using blockchain technology,” among others.

25. Since at least April 2021, Yuga Labs has used its BAYC Marks. They have been used for its logo, website, social media pages, marketing, and in connection with its partnerships, products and services. A true and correct copy of examples of their use are attached hereto as **Exhibit A**.

26. As a result of the advertising, promotion, and use of the BAYC Marks with Yuga Labs’ BAYC NFTs and other products and services, Yuga Labs has developed recognition for its goods and services under the BAYC Marks and has acquired and enjoys significant goodwill and common law rights for the BAYC Marks.

LEHMAN’S INFRINGEMENT OF THE BAYC MARKS

27. Yuga Labs uses the BAYC Marks on a nationwide and international basis to identify its well-known Bored Ape NFT collection. Lehman uses *the very same marks* to scam consumers in promoting his business venture selling the RR/BAYC NFTs and developing the RR/BAYC RSVP Contract and rrbayc.com and Ape Market websites.

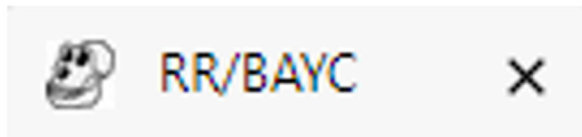
28. On information and belief, Lehman understood and believed that the RR/BAYC NFTs would be confusing to the average consumer and that Ripps’ intent was to explicitly mislead consumers by and through the sale of RR/BAYC NFTs. Nonetheless, Lehman continued to explicitly mislead consumers through the promotion, sale, and development of RR/BAYC NFTs and related contract and websites.

A. Infringement via the RR/BAYC RSVP smart contract and rrbayc.com website

29. In May 2022, Lehman created the RR/BAYC RSVP smart contract and rrbayc.com website to support the business venture. Together, this contract and website allowed users to

“reserve” RR/BAYC NFTs and automated the minting process, making it easier for the RR/BAYC Team to place the infringing RR/BAYC NFTs into the stream of commerce.

30. Lehman ratified, implemented, and supported the use of Yuga Labs’ marks on this smart contract and website to promote and sell the infringing NFTs as part of the RR/BAYC business venture. The RR/BAYC RSVP smart contract created by Lehman uses Yuga Labs’ BAYC trademark in the name of the contract (“RRBAYCRSVP”). The rrbayc.com website created by Lehman uses Yuga Labs’ BAYC trademark in the title of the page (“RR/BAYC”), in the browser tab for the page (“RR/BAYC”), and in the domain for the page (<https://rrbayc.com/>). The website also used Yuga Labs’ Ape Skull Logo mark (right) in the browser tab icon (left [image enlarged to show detail]):



And the website used Yuga’s “Bored Ape Yacht Club”, “BAYC”, and “Ape” trademarks to refer to RR/BAYC NFTs.

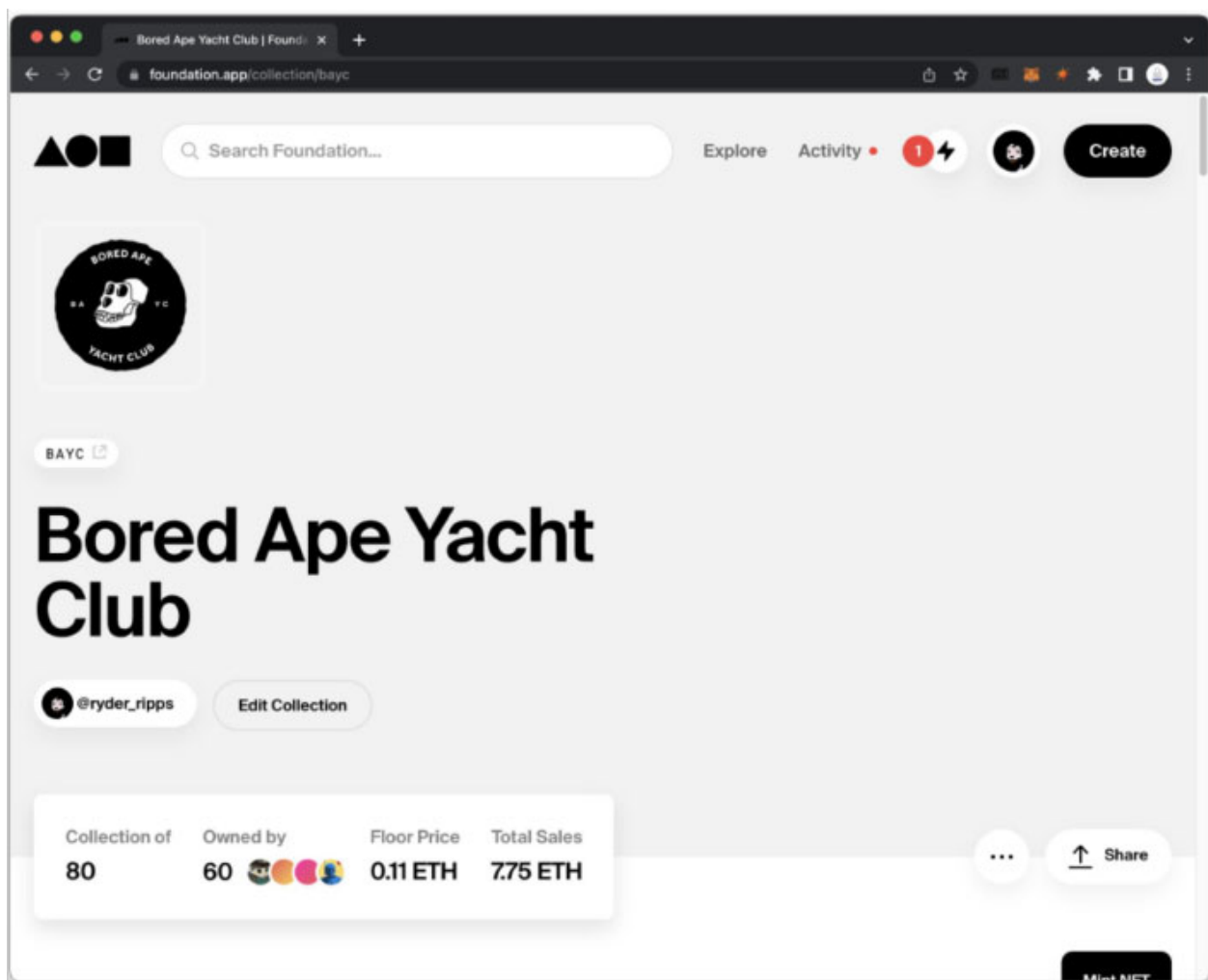
31. The NFTs depicted on the website also contain BAYC Marks. For example, RR/BAYC #362 has the BAYC, BA YC Logo, and the Ape Skull Logo marks on its hat and RR/BAYC #863 has the Ape Skull Logo mark on its shirt. Both of these fake NFTs are identical to their official BAYC counterparts BAYC #362 and BAYC #863. Indeed, on information and belief, this use of identical marks, images, and numbering schemes caused actual confusion, which Lehman was aware of and encouraged. Despite knowing sales of RR/BAYC NFTs through this business venture was a scam, he nonetheless implemented the scam using Yuga Labs’ BAYC

Marks. Moreover, Lehman personally saw to the completion of these infringing sales by directly interacting with consumers on Twitter to facilitate reservations.



B. Infringement via NFT marketplaces

32. Lehman also ratified, supported, and implemented the business venture’s sales of RR/BAYC NFTs on NFT marketplaces such as Foundation and OpenSea. These sales pages for the RR/BAYC NFTs were explicitly misleading, using Yuga Labs’ exact same marks to sell the infringing and identical looking NFTs. For example, the Foundation page was replete with uses of the BAYC Marks:



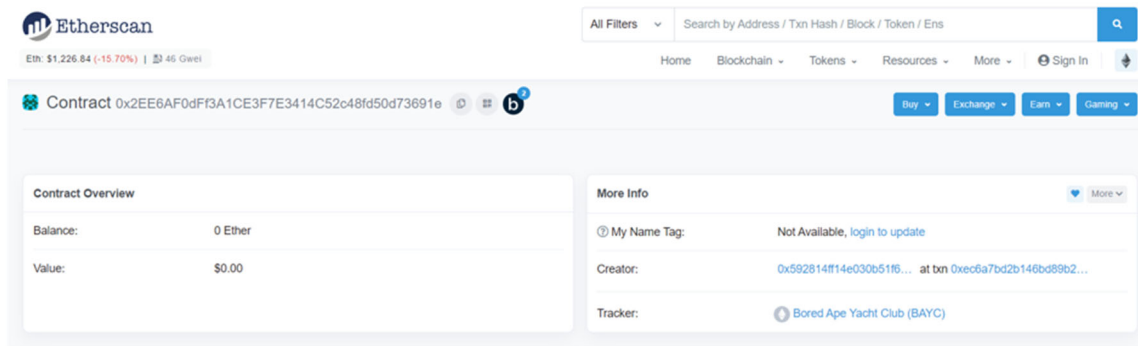
33. Yuga Labs sold authentic BAYC NFTs on many of these very same marketplaces. Indeed, the RR/BAYC NFTs are so similar to Yuga Labs' BAYC NFTs and actually confusing to consumers that OpenSea and other marketplaces repeatedly delisted them in response to complaints that they infringed Yuga Labs' trademarks.

34. Despite having knowledge of these takedowns and the RR/BAYC NFTs' infringing content, Lehman promoted the RR/BAYC NFTs by confirming on Twitter that they would "re-list[]" the infringing RR/BAYC NFTs on OpenSea and deploy Ape Market in order to continue selling infringing RR/BAYC NFTs without being delisted and continue to earn profits from fees. Lehman directly profited (or will if the scam is allowed to continue) from sales of

Yuga Labs' marks via these NFT marketplaces, despite his awareness and support of their infringing content.

C. Infringement via Etherscan

35. Likewise, Lehman ratified and supported explicitly misleading uses of Yuga Labs' marks on the Etherscan page for the RR/BAYC collection (<https://etherscan.io/address/0x2EE6AF0dFf3A1CE3F7E3414C52c48fd50d73691e>), which publicly tracks sales and other information for these NFTs. Yuga Labs believes, and therefore alleges, that Ripps stole Yuga Labs' BORED APE YACHT CLUB and BAYC trademarks to misleadingly label the token tracker for these RR/BAYC NFTs as "Bored Ape Yacht Club (BAYC)" (see bottom right corner of image below). Lehman then developed the reservation system to sell RR/BAYC NFTs, and oversaw and controlled their sales, knowing that they bore this misleading label.



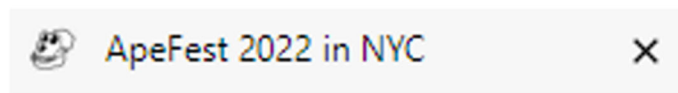
36. Token trackers are important for validating the authenticity of an NFT. And when buyers of the RR/BAYC NFTs review the token tracker and smart contract information for the RR/BAYC NFT, they are misled into thinking that these NFTs were officially sold by Yuga Labs. Lehman was aware that the use of BAYC Marks to sell RR/BAYC NFTs was confusing to average consumers and that the token tracker did not dispel that confusion, yet Lehman decided to persist in his development, marketing, and sale of RR/BAYC NFTs to explicitly mislead consumers.

D. Infringement via Ape Market

37. Lehman was also a key developer and director of Ape Market. Lehman and the RR/BAYC Team sought to establish an NFT Marketplace to further their business venture, attempt to compete with other popular NFT Marketplaces, and help them market and sell the infringing RR/BAYC NFTs for profit.

38. Lehman designed Ape Market to use BAYC Marks to profit off of the goodwill of Yuga Labs. He set up Ape Market to require a user to purchase an RR/BAYC NFT to access Ape Market. This was intended to encourage further sales and increase the value of their unsold RR/BAYC NFTs, resulting in greater profit for the business venture. Ape Market was likewise designed to trade RR/BAYC NFTs alongside BAYC NFTs, which use the exact same images and incorporate the same marks. On information and belief, as part of this design, Lehman supported cutting Yuga Labs' fees so that consumers could use Ape Market to sell authentic Yuga Labs BAYC NFTs but the percentage of the sale price that Yuga Labs would typically receive from another NFT marketplace would be reduced to zero percent. On information and belief, Lehman knew that the design of Ape Market could be confusing to consumers. And yet, Lehman continued to help with developing the admittedly confusing design. Lehman's objective was to explicitly mislead these consumers on Ape Market and maximize his profits.

39. The Ape Market website also uses Yuga Labs' Ape Skull Logo mark in the browser tab icon (left), which is nearly identical to the browser tab icon Yuga Labs uses for its ApeFest website (right).



On information and belief, Lehman understood that it was likely confusing to consumers to offer for sale the RR/BAYC NFTs and BAYC NFTs on Ape Market because the two NFT collections

were visually identical. And yet, he furthered and ratified the sales of knock-off NFTs and the use of Yuga Labs' BAYC Marks to sell the infringing RR/BAYC NFTs.

E. Infringement on social media

40. Lehman furthered the scam and attempted to reach more consumers by promoting it on social media such as Twitter. For example, on information and belief, Lehman participated in the creation of material to be used to promote Ape Market on Twitter. This promotional material was intentionally designed to look like Yuga Labs' promotional material in order to further confuse consumers into buying RR/BAYC NFTs. On information and belief, he also supported and directed payments to influencers to promote RR/BAYC NFTs in order to increase profits by building sales volume and hype around RR/BAYC NFTs and Ape Market.

41. As further promotion, Lehman repeatedly gloated about the success RR/BAYC NFTs had by trading on Yuga Labs BAYC Marks. Lehman also bragged about how much money he made selling these knockoff NFTs.

42. Although Ripps claims that his use of the images underlying Yuga Labs' NFTs and use of Yuga Labs' marks is art, Lehman treated their activities as nothing more than a money-making scam. On information and belief, Lehman believed that the RR/BAYC NFTs were utility tokens and a scam — not any art project. On information and belief, he joined the business venture for the purpose of making money.

43. Lehman did not distinguish his use of Yuga Labs' BAYC Marks from the identical look, sound, and commercial impression of his and the RR/BAYC Team's use of these marks. His use of Yuga Labs' BAYC Marks to promote and sell RR/BAYC NFTs is likely to cause, and has caused, confusion and has mislead consumers into thinking the RR/BAYC NFTs are in some way sponsored, affiliated, or connected with Yuga Labs' Bored Ape Yacht Club.

Yuga Labs believes, and therefore alleges, that Lehman purposefully, intentionally, and with malice used Yuga Labs' trademarks to confuse and explicitly mislead users into purchasing RR/BAYC NFTs.

44. Lehman, together with Ripps, Cahen, Hickman, and others sold the fake BAYC NFTs to more than 3,000 purchasers.

45. On information and belief, Ripps agreed that Lehman would receive 15% of the sales of RR/BAYC NFTs and a portion of the sales on Ape Market, all in exchange for his contribution in developing the RR BAYC RSVP Contract, www.rrbayc.com, www.apemarket.com, and marketing and promoting the same and the RR/BAYC NFTs.

FIRST CAUSE OF ACTION
FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(A))

46. Yuga Labs incorporates all paragraphs above by reference.

47. Yuga Labs is the owner of common law rights in the BAYC Marks that precede Lehman's first use of these marks.

48. Lehman has not obtained a license or permission from Yuga Labs to use the BAYC Marks.

49. Lehman's unauthorized use of the BAYC Marks falsely suggests that he and the products and services he promotes with the BAYC Marks are connected with, sponsored by, affiliated with, or related to Yuga Labs.

50. Lehman's unauthorized use of the BAYC Marks, unauthorized promotion and sale of the RR/BAYC NFTs, development and promotion of Ape Market, rrbayc.com, and the RR/BAYC RSVP contract, amongst any other product or service sold with the BAYC Marks, was willful and intentional and constitutes (a) false designation of origin, (b) false or misleading

description, and (c) false or misleading representation that products originate from or are authorized by Yuga Labs, all in violation of 15 U.S.C. § 1125(a)(1)(A).

51. As a direct and proximate result of Lehman’s conduct, Yuga Labs has suffered and will continue to suffer damages in an amount to be determined at trial.

52. Yuga Labs has been, is now, and will be irreparably injured and damaged by Lehman’s aforementioned acts, and unless enjoined by the Court, Yuga Labs will suffer further harm to its name, reputation and goodwill. This harm constitutes an injury for which Yuga Labs has no adequate remedy at law.

SECOND CAUSE OF ACTION
CYBERSQUATTING
(15 U.S.C. § 1125(D))

53. Yuga Labs incorporates all paragraphs above by reference.

54. On information and belief, Lehman manages, controls, and directs the promotion and sale of the infringing and misleading RR/BAYC NFTs, and the intentional and bad faith use of the infringing domains, including by supporting, aiding, and abetting the RR/BAYC Team.

55. Yuga Labs is the owner of common law rights in BAYC and APE that precede Lehman’s first use of these marks.

56. Lehman has not obtained a license or permission from Yuga Labs to use the BAYC and APE marks.

57. Lehman used the domain names <https://rrbayc.com/> and <https://apemarket.com/> (“Domain Names”), which are confusingly similar to Yuga Labs’ BAYC and APE marks.

58. Lehman used the Domain Names with a bad faith intent to profit from their confusing similarity to Plaintiff’s BAYC and APE marks. Among other things, upon information and belief:

- (a) Lehman used the Domain Names, despite knowing that he had no rights in the BAYC or APE marks.
- (b) Lehman made no bona fide, non-infringing, commercial use or fair non-commercial use of the Domain Names.
- (c) Lehman intended to divert consumers looking for Plaintiff's goods/services online to the websites bearing the Domain Names by exploiting the confusing similarity of the Domain Names and the BAYC and APE marks for their commercial gain and to tarnish or disparage the BAYC and APE marks.
- (d) Lehman used the Domain Names in bad faith as described herein.

59. As a direct and proximate result of Lehman's conduct, Yuga Labs has suffered and will continue to suffer damages in an amount to be determined at trial.

60. Lehman's conduct is directly and proximately causing substantial, immediate, and irreparable harm and injury to Yuga Labs, and to its goodwill and reputation, and will continue to damage Yuga Labs unless enjoined by this court. Yuga Labs has no adequate remedy at law.

61. Yuga Labs is entitled to injunctive relief pursuant to 15 U.S.C. §§ 1116 and 1125(d)(1)(C).

PRAYER FOR RELIEF

WHEREFORE, Yuga Labs prays for relief as follows:

1. Entry of an order and judgment requiring that Lehman, and his agents, employees, attorneys, or other persons who are in active concert or participation with Lehman, his agents, or attorneys to be permanently enjoined and restrained from (a) using in any manner the BAYC Marks, or any name, mark or domain name that wholly incorporates the BAYC Marks or is

confusingly similar to or a colorable imitation of these marks; and (b) doing any act or thing calculated or likely to cause confusion or mistake in the minds of members of the public, or prospective customers of Yuga Labs' products or services, as to the source of the products or services offered for sale, distributed, or sold, or likely to deceive members of the public, or prospective customers, into believing that there is some connection between him and Yuga Labs;

2. A judgment ordering Lehman, pursuant to 15 U.S.C. § 1116(a), to file with this Court and serve upon Yuga Labs within thirty (30) days after entry of the injunction, a report in writing under oath setting forth in detail the manner and form in which Lehman has complied with the injunction and ceased all offering of products or services under the BAYC Marks as set forth above;

3. A judgment ordering Lehman, pursuant to 15 U.S.C. § 1118, to deliver up for destruction, or to show proof of said destruction or sufficient modification to eliminate the infringing matter, all articles, packages, wrappers, products, displays, labels, signs, vehicle displays or signs, circulars, kits, packaging, letterhead, business cards, promotional items, clothing, literature, sales aids, receptacles, servers, social media accounts, or other matter in the possession, custody, or under the control of Lehman bearing the BAYC Marks in any manner, or any mark that is confusingly similar to or a colorable imitation of this mark;

4. A judgment ordering Lehman to withdraw any applications Lehman filed anywhere for the BAYC Marks;

5. A judgment in the amount of Lehman's profits, Yuga Labs' reasonable attorneys' fees and costs of suit, and pre-judgment interest pursuant to 15 U.S.C. § 1117;

6. A judgment for enhanced damages under 15 U.S.C. § 1117 as appropriate; and

7. Any and all equitable relief that may be available to Yuga Labs, including without limitation restitution, disgorgement, and the imposition of a constructive trust.

8. A judgment granting Yuga Labs such other and further relief as the Court deems just and proper.

Dated: January 20, 2023

Respectfully Submitted,

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Attorneys for Plaintiff Yuga Labs, Inc.

JURY DEMAND

Plaintiff Yuga Labs, Inc. hereby requests a trial by jury.

Dated: January 20, 2023

Respectfully Submitted,

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