

Article Information

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Blockchain Bites: ASIC targets Qoin in latest crypto enforcement move, Singapore High Court confirms NFTs are property

Michael Bacina, Steven Pettigrove, Jake Huang and Lola Hickey of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

ASIC targets Qoin in latest crypto enforcement move

ASIC has commenced civil penalty proceedings alleging unlicensed conduct and false, misleading or deceptive representations relating to a non-cash payment facility involving crypto-assets. The latest action follows [hot on the heels](#) of ASIC's decision last week to issue interim stop orders relating to three crypto-asset funds offered by Holon Investments.

On Tuesday, 25 October 2022, the corporate regulator [announced](#) that it had commenced proceedings in the Federal Court against Gold Coast-based BPS Financial Pty Ltd (BPS), the owner and operator of [Block Trade Exchange](#) and issuer of the Qoin digital wallet facility. ASIC alleges that [Qoin's](#) combination of tokens, a digital wallet and a distributed ledger implemented using blockchain technology is a non-cash payment facility.

[ASIC further alleges](#) that in marketing the Qoin facility, BPS made false, misleading or deceptive representations, including that:

- consumers who have purchased Qoin tokens can be confident that they will be able to exchange them for other crypto-assets or fiat currency (such as Australian dollars) through independent exchanges;
- Qoin tokens can be used to purchase goods and services from an increasing number of merchants registered with BPS;
- the Qoin facility and/or the Qoin wallet application used to transact Qoin tokens are regulated, registered and/or approved in Australia; and
- the Qoin facility and/or BPS are compliant with financial services laws.

ASIC Deputy Chair Sarah Court [said](#):

We allege that, despite what BPS represented in its marketing, Qoin merchant numbers have been declining, and that there have been periods of time where it was not possible to exchange Qoin tokens through independent exchanges.

ASIC is particularly concerned about the alleged misrepresentation that the Qoin Facility is regulated in Australia, as we believe the more than 79,000 individuals and entities who have been issued with the Qoin Facility may have believed that it was compliant with financial services laws, when ASIC considers it was not.

Qoin was already the subject of a [class action](#) commenced in 2021 over its decision to limit withdrawals from the Qoin facility.

ASIC's originating process does not separately allege that the Qoin token was a financial product. The allegations based on unlicensed activities and breaches of consumer protections under financial services laws hinge on ASIC's assessment of the Qoin facility as a non-cash payment facility. BPS has [stated](#) that it will be defending the matter. If the case proceeds, it

is likely to be one of the first ASIC enforcement actions relating to crypto-assets to proceed to Court.

No Boredom (or yacht clubs) as Singapore High Court confirms NFTs are property

In a ground-breaking judgment, the [Singapore High Court confirmed](#) that NFTs have attributes of property, and the Court has jurisdiction over disputes involving NFTs where the claimant is resident in Singapore.

This dispute involves a Bored Ape NFT (pictured above), one of 10,000 NFTs in the Bored Ape Yacht Club (BAYC) collection issued by the US-based company Yuga Labs.

The facts are relatively straightforward. The claimant says they are the owner of an NFT which was used as a collateral to enter into loans with a pseudonymous defendant via an online platform. The claimant had difficulty repaying a loan and alleged that the defendant first agreed to a refinance, but then reneged, “foreclosing” on the NFT using a function on the platform, transferring it to his own wallet and then listing it for sale on an NFT marketplace.

The claimant says he was devastated to lose his precious Ape, so he sued the defendant in the High Court of Singapore claiming that he had proprietary right over the NFT and that the defendant should be ordered to return the NFT. He also sought an urgent injunction to stop his Ape from being sold.

Justice Lee from the High Court said he was “satisfied” that the High Court has jurisdiction over the dispute, saying:

While the decentralised nature of blockchains may pose difficulties when it comes to establishing jurisdiction, to my mind, there had to be a court which had the jurisdiction to hear the dispute

His Honour continued:

in the present case, based on the available facts before me, that court was the Singapore court. The primary connecting factor was the fact that the claimant was located in Singapore, and carried on his business here.

The second issue considered was whether the court has jurisdiction against a pseudonymous person. The judgment confirmed that the defendant cannot hide behind their pseudonymity, and that freezing orders and legal papers can be served on someone whose actual identity is unknown.

The final and most interesting issue considered was whether NFTs give rise to proprietary rights, so that an injunction could be granted over an NFT. The Court’s answer was yes. His Honour ruled that NFTs are not merely information on a blockchain, but have specific attributes of property.

In particular, Justice Lee considered that:

- An NFT with its unique metadata is definable;
- An NFT with its private keys would be an asset with an owner being capable of being recognised as such by third parties;
- An NFT comes with a right that is capable of assumption by third parties, which in turn involves two aspects, that third parties must respect the rights of the owner in that asset (powered by blockchain technology), and that the asset must be potentially desirable (demonstrated by their active trading in the markets); and
- An NFT has some degree of permanent and stability.

The judgment cited with approval the decision in [AA v Persons Unknown](#) which in turn relied upon the [UK Jurisdiction Task Force Legal Statement on cryptoassets and smart contracts](#). The Legal Statement has been an often cited document since release in 2019 and is reportedly showing up in submissions in US cases given the slow pace of regulatory development there.

Despite recent [mixed messages](#) from the Monetary Authority of Singapore concerning crypto-assets and the slow pace of licensing in Singapore, this case shows how the common law can address novel products like crypto-assets and it will further enhance Singapore’s standing as a jurisdiction with clearer positions for crypto assets, making it an even more [popular international destination](#) for crypto businesses.