Blockchain/Cryptocurrency Caselaw: In Chronological Order

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U.S. v. e-Gold, Ltd., 550 F.Supp.2d 82 (2008)- 05/08/08

Declines to dismiss charges against defendants for violation of 18 U.S.C. §1960 (prohibiting the operation of an unlicensed money transmission business):

85 [citations omitted]- The Indictment alleges that Defendant e-Gold, Ltd. ("e-Gold") is an issuer of digital currency known as "e-gold," "which function[s] as an alternative payment system" over the Internet. In order for an individual to use e-gold as a currency, he must complete "four primary steps." First, he must open an account with e-Gold. Second, to fund the account, the account-holder must "convert[ ]" national currency into e-gold. Third, the account holder can then use the e-gold to buy a good or pay for a service, or to transfer funds to someone else. Finally, the account-holder may "exchange" his e-gold back into national currency. For every transfer of e-gold from one e-gold account to another, e-Gold collects a transaction fee. It also collects a monthly storage fee for the actual gold bullion and other precious metals that back up virtual "e-gold" and are said to be stored in Europe.

To convert national currency into e-gold, or vice versa, e-Gold requires the services of a "digital currency exchanger." The digital currency exchanger takes national currency from account holders and exchanges it for e-gold. It can also exchange e-gold back into national currency.

89- Section 1960 is clear on its face, and Defendants' operation. . . . unquestionably constitutes a "business" as that word is commonly understood.

But does Section 1960's reference to Section 5330. . . limit its scope to businesses that handle cash? The answer is no—for two reasons: (1) Section 1960 does not borrow the definition of "money transmitting business" from Section 5330, and (2) Section 5330's definition of "money transmitting business" is not limited to cash transactions, but rather includes transmissions of funds by any means.

S.E.C. v. Shavers, 2013 WL 4028182 (E.D. Tex. 2013)- 08/06/13

The defendant's arrangements to receive investor's investments in Bitcoin constituted securities subject to S.E.C. jurisdiction:

*2- The term "security" is defined as "any note, stock, treasury stock, security future, security-based swap, bond. . . [or] investment contract. . . ." . . .An investment contract is any contract, transaction, or scheme involving (1) an investment of money, (2) in a common enterprise, (3) with the expectation that profits will be derived from the efforts of the promoter or

a third party. . . . It is clear that Bitcoin can be used as money. It can be used to purchase goods or services, and as Shavers stated, used to pay for individual living expenses. The only limitation of Bitcoin is that it is limited to those places that accept it as currency. However, it can also be exchanged for conventional currencies, such as the U.S. dollar, Euro, Yen, and Yuan. Therefore, Bitcoin is a currency or form of money, and investors wishing to invest in [the defendant's enterprise] provided an investment of money.

U.S. v. Ulbricht, 31 F.Supp.3d 540 (S.D.N.Y. 2014)- 07/09/14

Finds that virtual currencies constitute "funds" for the purposes of the prevention of money-laundering financial transactions—and specifically, 18 U.S.C. § 1956(c)(4) (defining "financial transaction" as including "the movement of funds by wire or other means").

570 [citations omitted]- It is clear from a plain reading of the statute that "financial transaction" is broadly defined. It captures all movements of funds by any means, or monetary instruments. "Funds' is not defined in the statute and is therefore given its ordinary meaning. . . .

Put simply, "funds" can be used to pay for things in the colloquial sense. Bitcoins can be either used directly to pay for certain things or can act as a medium of exchange and be converted into a currency which can pay for things. Indeed, the only value for Bitcoin lies in its ability to pay for things—it is digital and has no earthly form; it cannot be put on a shelf and looked at or collected in a nice display case. Its form is digital—bits and bytes that together constitute something of value. And they may be bought and sold using legal tender. Sellers using Silk Road are not alleged to have given their narcotics and malicious software away for free—they are alleged to have sold them.

The money laundering statute is broad enough to encompass use of Bitcoins in financial transactions. Any other reading would— in light of Bitcoins' sole raison d'etre—be nonsensical. Congress intended to prevent criminals from finding ways to wash the proceeds of criminal activity by transferring proceeds to other similar or different items that store significant value. With respect to this case, the Government has alleged that Bitcoins have a value which may be expressed in dollars.

There is no doubt that if a narcotics transaction was paid for in cash, which was later exchanged for gold, and then converted back to cash, that would constitute a money laundering transaction.

One can money launder using Bitcoin.

U.S. v. Faiella, 39 F.Supp. 3d 544 (S.D.N.Y. 2014)- 08/19/14

The defendant, who converted his customers' cash deposits into Bitcoins, which he deposited in their accounts on the Silk Road website, violated 18 U.S.C. §1960:

*545- Bitcoin clearly qualifies as "money" or "funds" under . . . plain meaning definitions. Bitcoin can be easily purchased in exchange for ordinary currency, acts as a denominator of value, and is used to conduct financial transactions. . . .

If there were any ambiguity in this regard—and the Court finds none—the

legislative history supports application of Section 1960 in this instance. . . . Congress was concerned that drug dealers would turn increasingly to "nonbank financial institutions" to "convert street currency into monetary instruments" in order to transmit the proceeds of their drug sales. . . . [I]t is likely that Congress designed the statute to keep pace with such evolving threats. . . .

S.E.C. v. Shavers, 2014 WL 12622292 (E.D. Tex. 2014)- 08/26/14

The defendant's arrangements to receive investors' investments in Bitcoin still qualified as "investment contracts" and "securities" subject to S.E.C. jurisdiction:

*6- The cases reviewed by the Court indicate that the primary consideration in determining whether the investment requirement for finding a security has been met is whether the purchaser was required to give up something of value in exchange for the promised consideration. . . . Without yet turning to the question of whether Bitcoin is money, the Court is easily able to determine that Bitcoin constitutes something of value. . . . [T]here is no requirement of that the "investment of money" [element of the definition of "investment contract"] must be satisfied by an investment of cash, or currency that amounts to legal tender."

S.E.C. v. Shavers, 2014 WL 4652121 (E.D. Tex. 2014)- 09/18/14

Details the defendants' conduct and finds them liable for $38.6 million in illicit profits and $1.7 million in prejudgment interest, as well as $150,00 each in civil penalties.

U.S. v. Budovsky, 2015 WL 5602853 (S.D.N.Y. 2015)- 09/23/15

At *13, follows *U.S. v. Ulbricht* (2014) in finding that virtual currencies constitute "funds" for the purposes of for purposes of 18 U.S.C. §§ 1956(a)(1)(B)(i) (prohibiting money-laundering "financial transactions") and 1956(c)(4) (defining "financial transaction" as including "the movement of funds by wire or other means").

*1- Through its website, Liberty Reserve provided access to "instance, real-time currency for international commerce," which could be used to "send and receive payments from anyone, anywhere on the globe." With its virtual currency, known commonly as "LR," Liberty Reserve touted itself as the Internet's "largest payment processor and money transfer system," serving "millions" of people around the world, including those in the United States. An established Liberty Reserve user could receive and transfer LR with any other user, with Liberty Reserve collecting a one-percent fee per transaction.

*2- The Indictment. . . alleges that Budovsky and his associates were well aware of Liberty Reserve's function as an unlawful money laundering enterprise and deliberately attracted a criminal customer base by making financial activity anonymous and untraceable.

Greene v. Mizuho Bank, Ltd., 169 F.Supp. 3d 855 (2016)- 03/14/16

Addresses issues of personal jurisdiction over parties in litigation connected to the collapse of the Mt. Gox Bitcoin exchange.

U.S. v. 50.44 Bitcoins, 2016 WL 3049166 (D.Md. 2016)- 05/31/16

*2- Because the business operated by the Callahans under the Silk Road username "JumboMonkeyBiscuit" was not registered to transmit money as required by state and federal law, the Callahans violated 18 U.S.C. § 1960. . . . [T]he United States has established by a preponderance of the evidence that the 50.44 Bitcoins seized from the Callahans constitute property involved in a transaction that violated 18 U.S.C. § 1960. Because the United States has established a substantial connection between the property to be forfeited and a criminal offense, the 50.44 Bitcoins are subject to forfeiture under 18 U.S.C. §§ 981 and 983."

U.S. v. Murgio, 209 F.Supp.3d 698 (S.D.N.Y. 2016)- 09/19/16

The defendants' Bitcoin exchange constituted an unlicensed money transmission business.

707- Section 1960 does not specify what counts as "money" that is "transmitted," other than to note that it "includes. . . funds." . . . This raises the question of whether bitcoins are "funds" under the statute. The Court concludes that they are. . . .

. . . . Bitcoins can be accepted "as a payment for goods and services" or bought "directly from an exchange with [a] bank account." . . . They therefore function as "pecuniary resources" and are "used as a medium of exchange" and "a means of payment."

708- Dictionaries, courts, and the statute's legislative history all point to the same conclusion: bitcoins are funds.

U.S. v. Petix, 2016 WL 7017919 (W.D.N.Y.)- 12/01/16

The defendant did not violate 18 U.S.C. §1960 because, although that statute does not define the term, Bitcoin coins do not qualify as "money":

*5- Bitcoin is not "money" as people ordinarily understand that term. Bitcoin operates as a medium of exchange like cash but does not issue from or enjoy the protection of any sovereign; in fact, the whole point of Bitcoin is to escape any entanglement with sovereign governments. Bitcoins themselves are simply computer files generated through a ledger system that relies on blockchain technology. . . .

. . . The Court cannot rule out the possibility that widespread, ordinary use of bitcoins as money could occur someday, but that simply is not the case now. . . .

*6- Because Bitcoin does not fit an ordinary understanding of the term "money," Petix cannot have violated Section 1960 in its current form.

U.S. v. Ulbricht, 858 F.3d 71 (2017)- 05/31/17

Affirms the conviction and life sentencing of Ross Ulbricht, the creator and operator of Silk Road.

82-83: Silk Road was a massive, anonymous criminal marketplace that operated using the Tor Network, which renders Internet traffic through the Tor browser extremely difficult to trace. Silk Road users principally bought and sold drugs, false identification documents, and computer hacking software. Transactions on Silk Road exclusively used Bitcoins, an anonymous but traceable digital currency.

U.S. v. Coinbase, Inc., 2017 WL 5890052 (N.D. Cal. 2017)- 11/28/17

*4 [citations omitted]- The Narrowed Summons serves the legitimate purpose of investigating the "reporting gap between the number of virtual currency users Coinbase claims to have had during the summons period" and "U.S. bitcoin users reporting gains or losses to the IRS during the summoned years." Coinbase is the largest U.S. exchange of bitcoin into dollars with at least 5.9 customers served and 6 billion in transactions while only 800 to 900 taxpayers a year have electronically filed returns with a property description related to bitcoin from 2013 through 2015. This discrepancy creates an inference that more Coinbase users are trading bitcoin than reporting gains on their tax returns. The IRS submitted a declaration from [a senior revenue agent] attesting to these numbers. This is all that is required to make a "minimal" showing that the Government has met the good faith requirement.

Moreover, Coinbase itself admits that the Narrowed Summons requests information regarding 8.9 million Coinbase transactions and 14,355 Coinbase account holders. That only 800 to 900 taxpayers reported gains related to bitcoin in each of the relevant years and that more than 14,000 Coinbase users have either bought, sold, sent or received at least $20,000 worth of bitcoin in a given year suggests that many Coinbase users may not be reporting their bitcoin gains. The IRS has a legitimate interest in investigating these taxpayers. The Government has met its burden.

**8-9- Coinbase is ORDERED to produce the following documents for accounts with at least the equivalent of $20,000 in any one transaction type (buy, sell, send, or receive) in any one year during the 2013 to 2015 period:

(1) the taxpayer ID number,
(2) name,
(3) birth date,
(3) address,
(4) records of account activity including transaction logs or other records identifying the date, amount, and type of transaction (purchase/sale/exchange), the post transaction balance, and the names of counterparties to the transaction, and
(5) all periodic statements of account or invoices (or the equivalent).

Chino v. New York Department of Financial Services, 58 Misc. 3d 1203(A), 2017 N.Y. Slip Opinion 51908(U) (N.Y.S.Ct.)- 12/21/17

Dismisses, for lack of standing, a challenge to New York state's regulation of virtual currency businesses, NYCRR Title 23, Chapter 1, Part 200.

Commodities Futures Trading Comm'n v. McDonnell, 287 F.3d 213 (E.D.N.Y. 2018)- 03/06/18

228-229: Virtual currencies can be regulated by the CFTC as a commodity. Virtual currencies are "goods" exchanged in a market for a uniform quality and value. . . . They fall well within the common definition of "commodity" as well as the Commodity Exchange Act's definition of "commodities" as "all other goods and articles. . . in which contracts for future delivery are presently or in the future dealt in." Title 7 U.S.C. § 1(a)(9).

The jurisdictional authority of CFTC to regulate virtual currencies as commodities does not preclude other agencies from exercising their regulatory power when virtual currencies function differently than derivative commodities.

220-221: Until Congress acts to regulate virtual currency the following alternatives appear to be available:

1. No regulation. . . .
2. Partial regulation through criminal law prosecutions of Ponzi-like schemes, by the Department of Justice, or state criminal agencies, or civil substantive suis based on allegations of fraud. . . .
3. Regulation by the Commodities Futures Trading Commission ("CFTC"). . . .
4. Regulation by the Securities and Exchange Commission ("SEC") as securities. . . .
5. Regulation by the Treasury Department's Financial Enforcement Network ("FinCEN"). . . .
6. Regulation by the Internal Revenue Service ("IRS"). . . .
7. Regulation by private exchanges. . . .
8. State regulations. . . .
9. A combination of any of the above.

Founder Starcoin Inc. v. Launch Labs, Inc., 2018 WL 3343790 (S.D. Cal.)- 07/09/18
[citations omitted]

Denies motion of plaintiff, who alleged trade secret misappropriation, for a preliminary injunction.

*1- Plaintiff Founder Starcoin is a San Diego, California-based company that focuses its business in the "cryptocollectibles" market. Cryptocollectibles are unique, digital assets created

using blockchain technology. Defendant Launch Labs, doing business as Axiom Zen, is a Canada corporation that also conducts business in the cryptocollectible market. In August 2017, Defendant began developing "CryptoKitties, a game built on the Ethereum blockchain that allows users to securely buy, sell, trade, and breed genetically unique virtual cats." In the months after the initial development, Defendant pursued the idea of associating with celebrities and sports stars to develop "Kitties" with the celebrities' likeness.

Along those lines, on October 20, 2017, Axiom publicly disclosed its plan to match celebrities to CryptoKitties. Defendant's product manager was quoted in a Vice.com news article as saying:

> Kitties should be a part of this revolution of bringing blockchain technology to the masses ... So many great companies are building awesome technology that the world won't care about or understand. We're the flag bearer for the rest of this ecosystem in terms of getting celebrities to associate with kitties and the Ethereum network.

*2- Between October 2017 and February 2018, Defendant began discussions with a few celebrities to license their likeness on CryptoKitties.

*6- Here, Plaintiff's purported trade secret suffers from a lack of "sufficient particularity" that might separate it from matters of general knowledge. It is difficult to pin down what exactly constitutes Plaintiff's trade secret. . . . Plaintiff purports to claim a method for celebrities to "commoditize themselves, fund their projects, and create a new type of asset via the first security compliant token platform for entertainers." Plaintiff's product would allow entertainers to "commoditize themselves ... by launching a regulated token." Alternatively. . . , Plaintiff characterizes its trade secret as "licensing digital collectibles based on athletes, entertainers and celebrities." Is the trade secret a licensing scheme for digital collectibles or is it a method to commoditize and invest in celebrities? The Court need not determine which definition controls because, as will be seen, neither argument prevails.

*9- The evidence demonstrates that Defendant, not Plaintiff, developed the idea to license digital collectibles using the likeness of celebrities first. At the outset, the Court notes that Defendant Axiom launched its product in November 2017. To date, Plaintiff has not demonstrated it even has a product, much less what constitutes its product. This would not be fatal had Plaintiff developed its idea before Defendant and, in turn, Defendant relied on Plaintiff's idea.

Yet, as early as October 2017, Defendant was developing the idea to associate celebrities with CryptoKitties. This was not even a secret because Defendant publicly disclosed its plan on October 20, 2017. The same day, Defendant took concrete steps to actualize the plan by corresponding with Olympic athlete Charmaine Crooks. Defendant continued to reach out to entertainers in late 2017. . . . The sequence of events directly rebuts Plaintiff's argument that it was "likely that Axiom did not have these design or business ideas before they were demonstrated to them by Starcoin in February 2018." The evidence demonstrates that Defendant arrived at the very idea Plaintiff purports to assert well before February 2018.