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SEC loses a battle to win the war? Ripple dissociates from pumping XRP

While the defendants may have gained an edge in pre-trial rulings in SEC v. Ripple Labs, are Ripple's legal troubles now over?



could drop from the top 10. But reports of Ripple's demise were spectacularly

As of mid-April, XRP had increased 532% over the previous 12 months, and things also

took a favorable turn recently in the SEC lawsuit, with the defendants prevailing in two

discovery rulings — even turning the tables on the regulatory agency by winning

"The SEC Is Now On Trial - And Knows It," sounded Forbes.

access to the SEC's internal memos and minutes with regard to crypto discussions.

But the lawsuit continues — indeed, it is being closely watched and has the potential

to set legal precedents in a number of areas, Daniel Payne, partner in the fintech and

"The application of the statute of limitations to token sales;

securities laws to digital assets that FinCEN has regulated as

Bitcoin and Ether as models of non-security digital assets in

Therefore, while the defendants may have gained an edge in pre-trial rulings in SEC v.

accessing the SEC's internal views on crypto — i.e., the first discovery ruling. And in the

household expenditures in order to make its case?"

"However, although Ripple may discover information that will help its defense as a

result of that 'win,' the extent to which this will matter in the long run is far from

certain," said Goforth. "The two recent pre-trial discovery rulings have shifted the

playing field of the case," added Payne. "The defendants have gotten traction with

"It would be extremely premature to divine any significance from these interim ruling,"

agreed David Chase, a securities lawyer and former SEC enforcement attorney. These

A recent article in The National Law Review noted regarding SEC v. Ripple Labs that "the

SEC's case rests on the proposition that XRP is a security — if it is not, the SEC lacks

jurisdiction," while Payne told Cointelegraph: "There are a handful of district court

rulings that specific digital assets are securities: Telegram, Kik, ATBCoin, etc." Those

some important arguments, but that does not mean they have won the case."

are really discovery skirmishes and don't go to the heart of the case, he told

a virtual currency [e.g., BTC]; and whether courts will use

the extraterritorial reach of the securities laws to token

sales on worldwide blockchains; the application of the

blockchain practice at law firm Murphy & McGonigle, told Cointelegraph, including:

fact a security and that the firm had raised over \$1.38 billion through an unregistered securities offering in 2013, many wondered if XRP would even survive. Some exchanges delisted XRP; some asset managers sold their XRP tokens. XRP had lost its place as the top 3 currency by market capitalization and was even looking like it

exaggerated.

€ in

Ripple Labs, can one really say that Ripple's legal troubles are over? Not over till it's over "Not by a long shot," Carol Goforth, the Clayton N. Little professor of law at the University of Arkansas (Fayetteville), told Cointelegraph. Ripple made a good case for

second contest:

Cointelegraph.

"A different kind of case"

and remains a security."

approach to cryptocurrencies."

forward for future issuances."

the agency.

"[Ripple executives] Garlinghouse and Larsen made a plausible argument that the SEC was over-reaching with its request for eight years of their personal bank records. As the insiders argued, why does the SEC need to know

their legal analysis."

cases have provided important precedents that the SEC relies on now to police new token issuances that it believes are securities offerings. Continued Payne: "But Ripple is a different kind of case. XRP was first sold over eight years ago, and over that time, the XRP ledger has become decentralized, while Ripple has, in large part, decoupled from XRP. But the SEC is alleging that XRP was

John Wagster, an attorney at Frost Brown Todd, informed Cointelegraph that like

almost every SEC action in the cryptocurrency space, the claims against Ripple "will be

analyzed by market participants looking for a pathway to compliant token offerings,"

adding: "A healthy market needs regulatory consistency, and the most meaningful

outcome of the Ripple enforcement action would be one that provides a clear path

Yuliya Guseva, professor of law at Rutgers Law School, told Cointelegraph that "the

Telegram cases, the facts in SEC v. Ripple Labs are different. "The outcome of Ripple

Ripple case is exceptionally important." Even though it resembles the Kik and

Regarding the discovery ruling, Chase is interested to see the SEC's internal

not a "typical" turn of events for the agency, suggested Chase.

What is propelling XRP price upward?

discussions about XRP and cryptocurrencies among the trove of documents now

expected to emerge. "It usually runs just one way" — i.e., companies delivering their

But what is one to make of the run-up in XRP's market price in the past year — even

before the discovery rulings. "XRP price's journey to \$1 this year has been nothing

short of spectacular, considering the ongoing Securities and Exchange Commission

documents to the court. But in this case, it is the SEC that has to produce the goods -

may have a profound effect on the crypto market. For one, the ultimate decision should provide more clarity to the developers and crypto community." She added: "The decision may reveal if we have transitioned from the bygone era of ICOs and related enforcement to a more mature market phase with a more nuanced doctrinal

lawsuit against Ripple initiated in December 2020," commented Cointelegraph Markets contributor Marcel Pechman. In the weekend following the pre-trial rulings, XRP added over 40%, standing at around \$1.3 on April 18, while almost reaching the \$2 mark on April 14. Wagster told Cointelegraph that the increase in XRP's market price over the past year

has more to do with bullishness in crypto markets generally rather than anything

specific to XRP, while Chase opined: "Maybe what we're seeing is the free market in

operation." The SEC's lawsuit "is just another data point to be taken into account" in an

evaluation of XRP; investors could even be handicapping an eventual settlement with

There may be another interpretation: Maybe the SEC's decisions just don't matter that

much anymore when it comes to globally traded cryptocurrencies. Goforth disagrees.

The SEC still plays a large role in regulating U.S. exchanges and other businesses, she

said, while Payne noted that "if a cryptocurrency has a touchpoint within the U.S., the

SEC has an argument that it can assert jurisdiction."

Related: You don't own me: XRP price surge defies SEC's clamp-down on crypto He did allow, however, "that XRP is traded worldwide, where many purchasers may be unaware of the SEC's case," which may have something to do with XRP's price resilience. The price may also be affected by "purchasers who are betting that Ripple will win [the SEC case] and are trying to buy low." The U.S. Supreme Court provided the framework to determine whether an asset is a

security in SEC v. Howey Co. "The Court explained that an asset is a security if it

has been applying the 71-year-old Howey Test ever since, and in its Ripple Labs

complaint, the agency said XRP should be considered a security — explained the

represents an investment in a common enterprise with the expectation of profits

derived solely from the efforts of others," recounted The National Law Review. The SEC

journal — because: "Investors who purchased XRP anticipated that profits would be dependent upon Ripple's efforts to manage and develop the market for XRP. Ripple has disputed the SEC's allegations, arguing that XRP is a 'fully functioning currency that offers a better alternative to Bitcoin."

Goforth further explained: "If the cryptoasset is truly decentralized so that there is no

'other' upon whom purchasers are relying, the Howey Test is not met." That is, the coin

or token would not be considered a security, as happened with Bitcoin (BTC) and Ether

(ETH). "In the case of an asset like XRP, where the creator/issuer owns the bulk of the

asset, controls its distribution, and is primarily responsible for its utility and potential

profitability, it is easy to see how purchasers could be relying on the creator/issuer."

Typically, SEC enforcement actions target issuers who are engaging in obviously fraudulent or corrupt behavior or target a specific activity they are hoping to dissuade, noted Wagster, adding: "The action against Ripple appears to target the promotional activity Ripple undertook when selling its tokens." "Ripple does not want to face the regulatory burdens of registering XRP as a security when Bitcoin and Ether appear to have escaped that fate," said Payne, adding: "The

were first created — and whether the court even views that comparison as the right one could make or break this case." Meanwhile, even if the court decides that XRP is unlike Bitcoin and Ether — and has to be registered in the U.S. as a security — "that does not necessarily make the XRP token worthless," suggested Goforth. "The real question would be what kind of final

order the SEC might accept if it is clear that the court is going to find that XRP was sold

as an investment and was, therefore, a security. If we analogize to SEC v. Kik" (another

case where tokens [e.g., Kin] were issued by a company), then:

Ripple and its current and former CEO."

question of how similar XRP is to Bitcoin and Ether today — as opposed to when they

"Ripple might be permitted to continue operating with limitations on the right of the company and its founders to sell additional tokens. Just as Kik is required to notify the SEC of trades, a similar obligation might be imposed on

and be more readily traded, so that could be a real win for investors," said Goforth. And if the SEC loses? Wagster told Cointelegraph: "No matter the outcome of the SEC's complaint against Ripple, the SEC will continue to be one of the primary regulators of

"On the other hand, if the SEC insists on registration, it will be up to Ripple to decide if

that makes financial sense. If it does, a registered token will actually have more value

The wheel of fortune rises and falls Even if Ripple prevailed in round one, it hasn't won the match. As Wagster told

Cointelegraph: "The U.S. District Court's recent rulings are certainly favorable to Ripple, but the game is far from over. The SEC tends to choose its cryptocurrency

cryptocurrency in the United States."

#Ripple

#SEC

#Altcoin

targets carefully." Moreover, he added: "Once the SEC decides to move forward with a high-profile

enforcement action, it would be embarrassing for them to

back down without some sort of victory. I expect them to continue to pursue their claims against Ripple with zeal." There was a time when people thought that Ripple Labs, not Coinbase, would be the

first crypto-native firm to be listed by a major U.S. stock exchange. Coinbase went public this past week on the Nasdaq exchange with a well-subscribed offering that drew comparisons with Facebook's and Airbnb's public debuts. Perhaps Ripple's destiny is not to make historic waves on Wall Street, but rather in the courts - i.e., helping to clarify the rules that will prevail in the expanding cryptoverse.

#XRP

#United States

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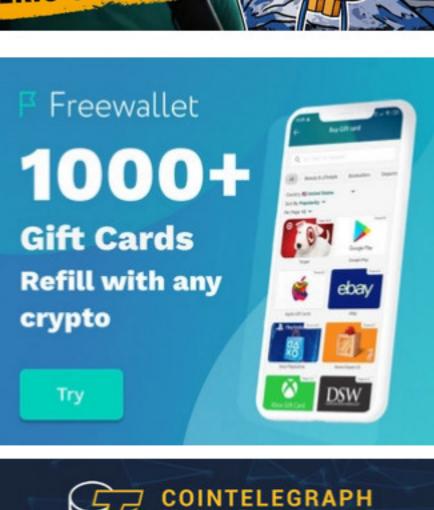
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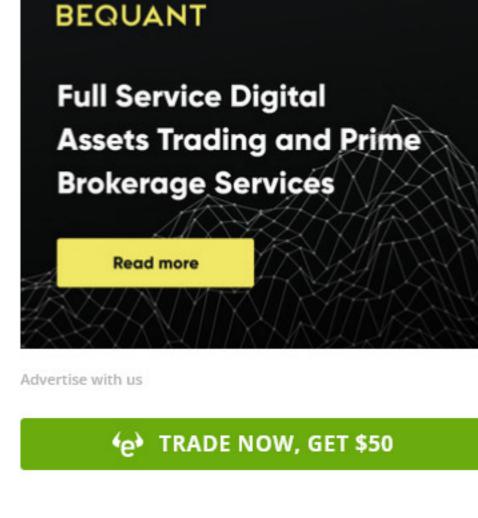




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