

Fighting Intellectual Piracy in the Metaverse

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With the replication of the real world in a virtual environment, Metaverse users will be able to acquire digital goods like clothes, shoes and accessories, in addition to interacting with other avatars and frequenting virtual spaces and events. Among many other possibilities, acquired items can be used by avatars and game characters, or even be applied to individuals by means of augmented reality technology.

As a rule, digital goods take the form of NFTs (non-fungible tokens), which are a type of virtual certificate of authenticity and ownership based on blockchain technology. NFTs hold information that identifies the original item and makes it unique.

The NFT market is growing rapidly, and moves billions of dollars. Just as in the case of works of art and luxury items, the main motives behind the acquisition of NFTs – sometimes for very large sums of money – are the goods' exclusivity and uniqueness, so it is no coincidence that the fashion industry is making significant investments in the sector. After all, the conjunction of fashion and technology creates a new market with immense potential and conceptual synergy. Brands such as Adidas,

Balenciaga, Dolce & Gabbana, Gap, Gucci, Nike and Ralph Lauren are already launching digital products in the form of NFTs.

One of the big challenges for companies doing business in the Metaverse is finding ways to strengthen the protection and effectiveness of their intellectual property rights to curb the activities of virtual counterfeiters.

The migration from a physical to a digital model may act as an incentive to counterfeiters: in the virtual world, items that imitate other businesses' designs or brands (or both) can be created and sold anywhere in the world, without any need for factories, physical sales establishments, or logistics operations to transport the products. Identifying the place where intellectual property rights were violated could be an arduous task in such a context, and the varying IP laws and practices of different jurisdictions must also be taken into account.

Nike and Hermès are examples of businesses that have already detected virtual items that are unauthorized copies of the designs and brands of some of their famous products, and have faced challenges in trying to stop this type of piracy in the Metaverse.

Although counterfeiting in the Metaverse is a recent phenomenon, there are some measures that owners of intellectual property rights can take to attempt to strengthen protection for their rights as the new scenario unfolds, laying the foundation for any future actions that may be required.

Given the territoriality of the protection conferred by a trademark registration, companies should begin to consider the jurisdictions that have the largest numbers of Metaverse providers and users when choosing where they will register their marks. In addition, regardless of the company's business sector, they should consider increasing the scope of protection of their registrations to include virtual products and services, especially in classes 9, 35 and 41, which cover downloadable virtual goods, virtual retail store services, and online entertainment services, respectively. Another potentially useful instrument for protection of intellectual property rights is the registration of non-traditional marks, such as sound marks and marks composed of moving images, especially in jurisdictions that accept these types of trademark registration.

Expanding trademark protection by obtaining registration in certain jurisdictions is also fundamental to facilitating the removal of content from virtual platforms in the Metaverse. After all, platforms that adopt specific notice-and-take-down procedures for removal of content that infringes third-party rights invariably require that the party requesting removal proves its ownership over the infringed rights.

Lastly, companies should consider the idea of establishing their own presence in the Metaverse. Aside from being another way to reach consumers and increase awareness of their brands and products, businesses that are active in the Metaverse can monitor events in this novel environment more closely, which will tend to have an inhibiting effect on counterfeiting activities.

>>> This article is part of the e-book "*Metalaw: Reflections on Law in the Metaverse*".

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