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Luxury Brands in the Digital Environment

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The global market for luxury products and services continues to gain prominence and growth, even with the economic impacts caused by the Covid-19 pandemic. The demand for luxury continues strong and with great projection of global growth thanks to its capacity for adaptation and innovation.

Brazil is one of the countries that follows this scale of growth and indicates that it has ample space for the performance of brands belonging to the luxury segment, given its large number of potential consumers.

Unlike what happened in other segments, the sales of high-end items in the Brazilian market increased considerably from 2020 onwards. One of the possible explanations is the fact that the upper middle class, which used to travel abroad frequently and purchase luxury products in other countries, has started to consume more products in Brazil due to the restrictions imposed by the pandemic, which made it difficult to travel to foreign countries.

Another relevant change caused by the pandemic was the increase in sales of products and services online, through websites, social networks and delivery applications, for example. Many companies that still resisted entering the digital environment had to adapt quickly and enter the online sales universe to be able to maintain their activities despite the restrictions arising from the pandemic.

Today, consumers of luxury goods seek not only exclusive, high quality and renowned products, but also unique and pleasurable shopping experiences. The loyalty of the luxury consumer happens from the moment he/she receives exclusive treatment, what makes it feels special when acquiring a certain product or service from a specific brand.

Thus, one of the biggest challenges for brands in the luxury segment is to provide this experience to their customers. The more interesting, creative, and engaging is the experience lived by the consumer, the greater is the strengthening of the brand and its local notoriety and, potentially, international.

With the exponential increase of activities within the virtual universe, resulting from the natural evolution of society and driven by pandemic constraints, it has become inevitable that luxury brands expand their activities to the virtual environment, either through e-commerce, the use of NFTs or the replication of experiences lived by the onsite consumer to the metaverse.

As we look ahead to 2022 and the years to come, we can expect more and more luxury brands to invest in digital technologies, such as virtual reality, artificial intelligence, facial, gestural and/or emotional recognition software, electronic games, cryptocurrencies and the Internet of Things (IoT), in order to offer immersive and engaging experiences to consumers. By finding the right balance between online and offline content and experience, brands will be able to differentiate themselves, engage new audiences, and solidify themselves in the most diverse markets.

In this context, it is of great relevance to define an appropriate legal strategy to ensure the protection of luxury brands in the digital environment. After all, the trademarks are one of the main assets of companies operating in the luxury segment, because it is through them that their products and services are identified by consumers and recognized in the market in general.

Moreover, as consumers of luxury goods often attach great importance to the exclusivity and unity of the items they buy, it is especially important for companies in this market segment to take appropriate measures to prevent imitations and unauthorized copies of their trademarks and products by third parties.

A company that wants to be present in the online universe through e-commerce or in the metaverse, for example, must reassess its portfolio of trademarks and other intellectual property rights in order to verify whether these assets are adequately protected in relation to virtual products and services.

The most appropriate classes for trademark registration related to the virtual environment are: (i) class 9, which includes computer programs, computer software, electronic game programs, downloadable virtual goods, digital tokens based on blockchain technology and non-fungible tokens [NFTs]; (ii) class 35, which covers online retail store services containing physical and virtual items and provision of online marketplace of goods and services for buyers and sellers; (iii) class 36, comprising electronic wallet payment services [e-wallet] and electronic transfer of virtual currencies [cryptocurrencies]; (iv) class 41, comprising entertainment services for the virtual environment; and (v) class 42, comprising technology services in general, such as software as a service [SaaS] and platform computing as a service [PaaS].

Brazil adopts the "first-to-file" system, according to which, as a rule, the first to file a trademark application with the Brazilian Patent and Trademark Office (BPTO) will obtain the registration and, consequently, the right to the exclusive use of that trademark to identify the products and/or services protected by the registration throughout the Brazilian territory.

Thus, it is important that companies in the luxury segment adopt measures as soon as possible to expand the protection of their trademarks to products and services related to the virtual environment, in order to increase their strength in face of possible conflicts.

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