

DOING BUSINESS IN THE METAVERSE—THREATS AND OPPORTUNITIES IN WEB3

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AGENDA

Topic
What is the Metaverse?
How do I get started?
Why do business in the Metaverse?
Brand and NFT Examples in the Metaverse
What are the legal and business risks of doing business in the Metaverse?
Cybersecurity and privacy regulatory / civil risks
Regular common law liability (contract, tort)
Intellectual property risks and disputes

WHAT IS THE METAVERSE?

“Like the development of writing, or the advent of the computer age, the dawn of the metaverse will be a grand pivot point in the history of humanity.”

Herman Narula, head of the British tech company Improbable.

WHAT IS THE METAVERSE?

“A massively scaled and interoperable network of real-time rendered 3D virtual worlds”

Matthew Ball, [The Metaverse: How It Will Revolutionise Everything](#)

WHAT IS THE METAVERSE?

“The metaverse is a digital reality that combines aspects of social media, online gaming, [augmented reality](#) (AR), virtual reality (VR), and cryptocurrencies to allow users to interact virtually. Augmented reality overlays visual elements, sound, and other sensory input onto real-world settings to enhance the user experience. In contrast, virtual reality is entirely virtual and enhances fictional realities.”

--[Investopedia](#)

AUGMENTED REALITY



VIRTUAL REALITY



Sources: [Roblox](#) gaming platform and Decentraland VR platform

WHAT IS THE METAVERSE?

No single Metaverse—yet. A concept, with several competing virtual reality platforms. For example:

- [Decentraland](#)
- [The Sandbox](#)
- [Roblox](#)
- [Horizon Worlds](#) (Meta, formerly Facebook)
- [Bloktopia](#)
- BUT: several platforms are now working together as the [Open Metaverse Alliance for Web3](#) (OMA3™) to produce “interoperability protocols,” “transferable metaverse identities,” and “portals between worlds”
- AND: Meta (formerly Facebook) is [working aggressively](#) to dominate this space

HOW DO I GET STARTED?

Exploring:

- Most platforms allow for free / guest accounts
- For more options, create a permanent account linked to a crypto wallet

Doing business:

- Link to cryptocurrency wallet to carry out transactions in the Metaverse
- Pursue branding and promotional opportunities
- Purchase virtual real estate and set up your virtual storefront or office

WHY DO BUSINESS IN THE METAVERSE?

- Immersive entertainment
- Business operations (e.g. guiding & co-ordinating field work)
- Education & training
- Enhanced customer experiences
- Work meetings
- Advertising, branding & marketing
- Digital locations (interactive, virtual storefronts and offices)
- New revenue streams (e.g. virtual real estate; collectible NFTs; virtual clothing / accessories for avatars)

*Sources: Mary K. Pratt, *TechTarget*, "[10 examples of the metaverse for business and IT leaders](#)"

BRANDS IN THE METAVERSE

- Sony and Lego invested \$1 billion each into Epic Games in April 2022 to fund their metaverse.
- Strong trademark and patent applications for virtual goods.
- Nike
 - Launched **NIKELAND** in November 2021: interactive world where visitors get to play mini-games and indulge in a lifestyle centered on sport and play.
 - Web3 platform called **.Swoosh** to enable customers to “to learn about, collect, and eventually help co-create,” digital items like virtual shoes or jerseys.
- Samsung launched its first metaverse store in Decentraland in January 2022.
- Gucci, Louis Vuitton, Burberry (and other fashion brands) have NFT wearables.
- Dolce & Gabbana took part in a Metaverse fashion show.

ENTERPRISE / INDUSTRIAL METAVERSE

- INTERPOL announced launch of a virtual global police force.
- allows registered users to tour a virtual office at INTERPOL's General Secretariat headquarters in Lyon, France.
- Avatar interaction with other officials.
- Immersive training courses on forensic investigation and other policing capabilities.
- « Digital Twins » allow for simulations used for training, optimisation, planning, testing.

DECENTRALAND – ETRO FASHION SHOW



FORTNITE – TRAVIS SCOTT



EXAMPLES OF NFTS

- **Beeples “Everydays”**: \$69M
- **Jack Dorsey’s first-ever tweet**: \$3M
- **Art Gobblers** (creator of Rick and Morty)
- **San Francisco MOMA** virtually hosting NFT artwork
- **Furniture NFTs: Decentraland and Minecraft**
- **RTFKT virtual sneakers**
- **Nike NFT sneakers**



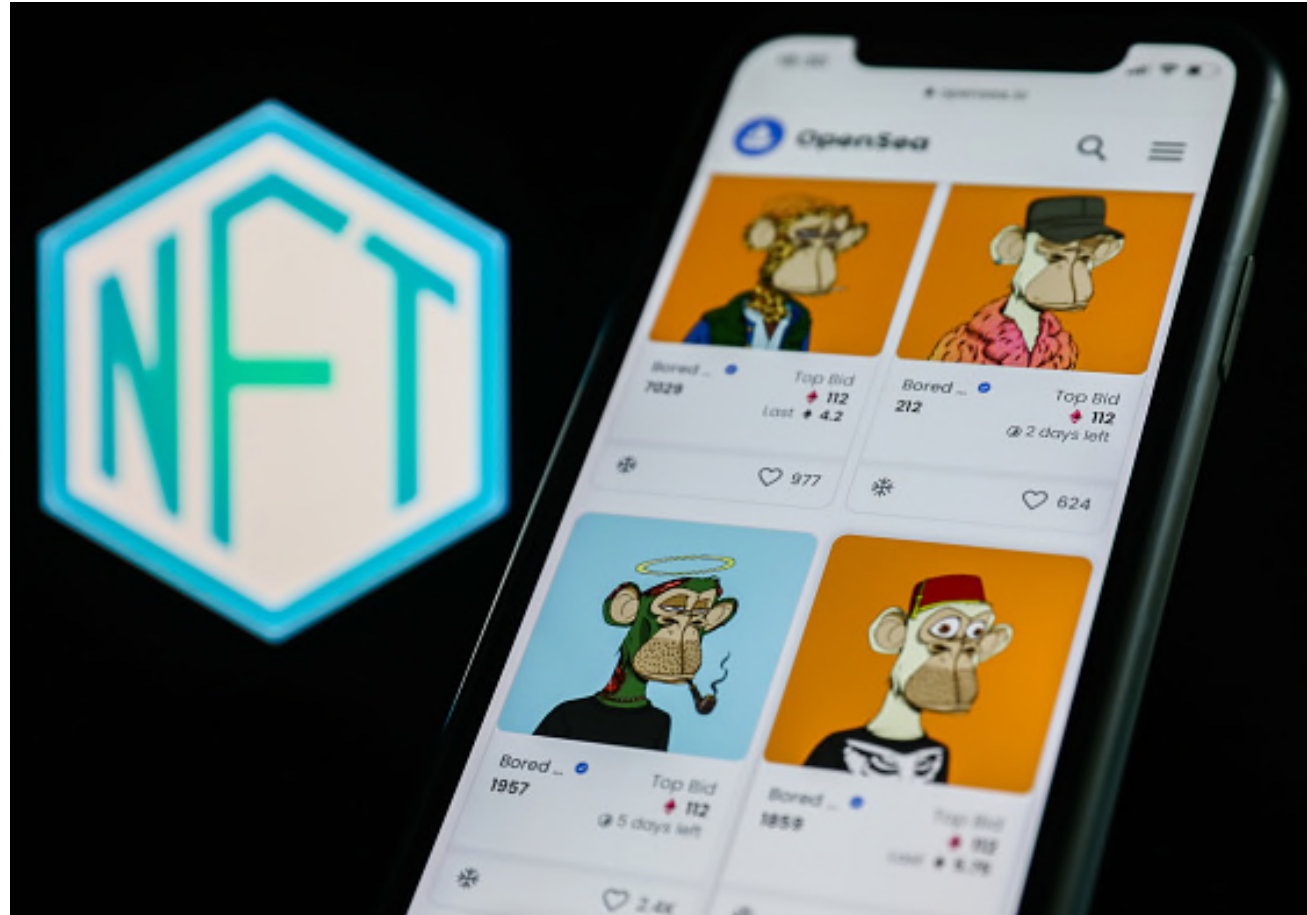
NFTS - “FOODVERSE”

Gateways to dining experiences

Collectables: art or recipes

- **Taco Bell**
 - Charitable NFT collection
- **Chipotle**
 - Virtual ROBLOX restaurant with real-world giveaways
- **McDonalds:**
 - McCafé

EXAMPLES OF NFTS – BORED APE YACHT CLUB



LEGAL AND BUSINESS RISKS / ISSUES

- **Cybersecurity Risks**
- **Litigation over volatility**
- **NFTs as securities**
- **Reputational** (ie. environmental impact)
- **Product liability** (ie. mistakes in smart contract code)
- **Virtual “Property” Rights**
- **Advertising Compliance**
- **Common law risks**
- **Jurisdiction**
- **Data Security & Privacy**
- **Disruption of revenue stream**
- **Security**
- **Money laundering (AML)**
- **Tax**
- **Regulatory Compliance**

EXAMPLES OF BUSINESS AND LEGAL RISKS

- **Cybersecurity and privacy regulatory / civil risks**
- **Regular common law liability (contract, tort)**
- **Intellectual property rights disputes**

WHAT ARE THE BUSINESS / LEGAL RISKS?

Cybersecurity Challenges

- Little / no moderation / support for users
- Access point (i.e. device) compromise
- Avatar anonymity → risk of spying



WHAT ARE THE BUSINESS / LEGAL RISKS?

Cybersecurity Risks

- You can't be certain of the safety of your data / your customers' (e.g. contact data, preferences, data from reactions / interactions, biometric data, crypto wallet information)
- You don't have a say in security measures taken / not taken to secure the platform
- Why? Because you don't control the platform



WHAT ARE THE BUSINESS / LEGAL RISKS?

Cybersecurity Risks

- Transactions are crypto transactions and thus only as safe / reliable as crypto
- If you're a "vital" systems operator under Bill C-26, will you be able to fulfill / enforce your vendor security obligations vis-à-vis the VR platform?



WHAT ARE THE BUSINESS / LEGAL RISKS?

Privacy Regulatory Risks

- Does collecting / using / storing customers' personal info *through a VR platform* put you offside privacy laws re: the security storage / transfer of collected data?
- Do you need consent? How will you get and record it?
- Can you control how that PII is retained / deleted on the platform you *don't* control?
- Can you honour a “right to be forgotten” deletion request for data collected *by* the platform (if a customer has that right)?



WHAT ARE THE BUSINESS / LEGAL RISKS?

Common Law Risks

- Corporate / commercial disputes
 - Experimental tech → disappointed expectations / claims of misrepresentation → collapsed deals → litigation
 - Disputes over who owns the code and collected data
- Virtual property disputes
 - Do you have “property” rights for your virtual real estate?
 - Can you stop / expel trespassers?



WHAT ARE THE BUSINESS / LEGAL RISKS?

Common Law Risks

- **Tort:** researchers [have observed the following](#) on VR platforms:
 - Hate speech, verbal harassment, graphic content
 - Violent sexual encounters

What if this happens in your virtual store / office or at your virtual event?

- How could you even prevent it?
- Will the platform help?



WHAT ARE THE BUSINESS / LEGAL RISKS?

Common Law Risks

- **Tort:**
 - Vicarious liability for employee representations or misconduct
 - Physical injury while using AR/VR devices (see: YouTube) while participating in your virtual event



WHAT ARE THE BUSINESS / LEGAL RISKS?

Litigation challenges

- Jurisdiction—which courts have jurisdiction if it happens in VR?
- Evidentiary issues—will you be able to gather the evidence you need from the platform?
- Lack of legal precedent to provide norms / predictability, guide conduct



WHAT ARE THE BUSINESS / LEGAL RISKS?

Recourse against the VR Platform (Decentraland Terms of Use)

- Governed by DAO (decentralized autonomous organization)—so there's no *company* to sue
- “Use at own risk” waiver
- Acknowledge the “inherent risks associated with cryptographic systems”



WHAT ARE THE BUSINESS / LEGAL RISKS?

Recourse against the VR Platform (Decentraland Terms of Use)

- Acknowledge and agree to risk of “theft or loss of your cryptographic tokens or property”
- No liability for third-party vendor error (e.g. the add-on that attaches your crypto wallet)
- Liability excluded for indirect / reputation loss
- Liability limited to greater of your payments to the platform for 12 months or \$100



WHAT ARE THE BUSINESS / LEGAL RISKS?

Recourse against the VR Platform (Decentraland Terms of Use)

- Binding arbitration (seat = Panama)
- Class action rights waived

Terms of Services

Did you ever read them?

1. **Description of Service:** The Service provides consumer content regarding insurance products and services, for informational purposes only. The Service does not sell any type of insurance and is not an insurer or insurance broker, nor does it recommend, support or endorse any particular insurance plan. The Service enables you to request to receive insurance or discount program quotes from a network of insurance companies, agents, brokers, discount program representatives and other providers (the "Insurance Representatives"). Through the Service, you choose to provide information about yourself and your insurance preferences ("User Information") which is in turn used to attempt to match you with Insurance Representatives who may be able to follow-up on your request. If you use the Service, we cannot guarantee that any of the Insurance Representatives to whom we forward your information will contact you or agree to offer you coverage. We also cannot guarantee the carrier affiliation of any Insurance Representatives who may contact you. We have no responsibility whatsoever for the conduct of any of the Insurance Representatives who may contact you. You agree to indemnify and hold the Service harmless from and against, while using the Service, any and all claims, damages, losses, costs, expenses, attorney's fees and reasonable costs, including your affiliation with any person or entity; (b) submit false or misleading information; (c) exploit the Service for any commercial purpose; (d) engage in spamming or other similar activity; (e) restrict or inhibit others from using the Service; (f) engage in any conduct that would constitute a violation of applicable law, including but not limited to a violation of applicable computer laws; (g) use the Service to engage in any activity that is prohibited by applicable law through the Service; (h) take any other actions that would damage, overburden, interfere with, or otherwise harm the Service or the use of the Service by any other party. You acknowledge and agree that you are solely responsible for the accuracy of the User Information you submit. We may delete or destroy User Information at any time and we reserve the right to refuse to post or to remove any User Information, in whole or in part, that we, in our sole discretion, believe to be inappropriate.

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LEGAL CONSIDERATIONS – INTELLECTUAL PROPERTY

1. NFT Considerations

- Contracts
- Acquisition of Rights

2. Enforcement Considerations

3. Trademark Filing Strategies

4. Advertising



NFT CONSIDERATIONS - CONTRACTS

- **Privity between the NFT issuer and secondary purchaser, or between downstream and subsequent purchasers**
 - Particularly with terms relating to off-chain commitments
 - Do NFT issuers want commitments offered to initial purchasers to be transferrable to ALL downstream purchasers?
- **Click-Wrap Agreements and Terms of Sale**

NFT CONSIDERATIONS – ACQUISITION OF RIGHTS

- **Entities minting NFTs must ensure they own the underlying IP**
- **Off-Chain intermediaries can solve some technical issues**
- **Copyright**
 - No copyright in art generated by non-human entities
 - First Sale Doctrine

NFT PROJECTS AND FRAUD

- **Fraudulent NFT Projects**
 - Ambitious promises with no expectation or plan for execution
 - Projects cancelled without refunds
- **Consumer protection**
 - “Rug pulls”
- **Market manipulation**
 - Pump-and-dump schemes
 - Class action lawsuit: *Ryan Huegerich et al. v. Steve Gentile, et al.*, 2022 2:22-cv-00163
- **Sock-puppeting**

ENFORCEMENT CONSIDERATIONS

- **Settlement Agreements should cover NFTs**
- **Unauthorized reproduction of NFTs**
- **Territoriality and jurisdiction**
- **Strong filing strategies to anticipate Metaverse plans**
- **Swift action to redress infringement**
- **Before NFTs are minted or purchased:**
 - What legal rights are granted with the underlying asset?
 - Can the NFT be resold or transferred?
 - What, if any, rights are transferred upon resale?

TRADEMARK FILING STRATEGY FOR NFTS

- **Class 9 leading the way**
- **Consider;**
 1. Class 35 (retail sale of virtual goods)
 2. Class 41 (entertainment services)
 3. Class 42 (non-downloadable software)
 4. Class 43 (virtual restaurant)
 5. Class 45 (leasing of digital content)
- **USA NFT-related applications jumped 7x in the first months of 2022**
- **Virtual goods and services up by 250% over 2021 (USA)**

ADVERTISING

- **Influencer advertising**
- **Advertising to children**
- **Legal implications of advertising claims**
- **Contest promotions**
- **Ambush marketing**

GROUND BREAKING CASES

- *Ryan Huegerich et al v Steve Gentile et al (Class Action)*
- *Birkin (Fashion)*
- *Nike (Sport)*
- *Pulp Fiction (Cinema)*
- *NFTs as Property*
- *Bored Ape (NFTs)*
- *Juventus FC*



RYAN HUEGERICH ET AL V STEVE GENTILE ET AL

- **No relation between EthereumMax Token and the second most widely-traded cryptocurrency: Ether**
 - Intentionally misleading, strategic decision to confuse investors
 - Likened to creating a “McDonald’sMax” Token with the iconic golden arches, but no relation to MacDonald’s itself



Symbol for Ether (ETH)

Image courtesy of
<https://ethereummax.org/>



RYAN HUEGERICH ET AL V STEVE GENTILE ET AL

- Kim Kardashian agreed to pay a \$1.26 million fine to the Securities and Exchange Commission to settle civil charges after she was found to have touted EthereumMax, on Instagram.

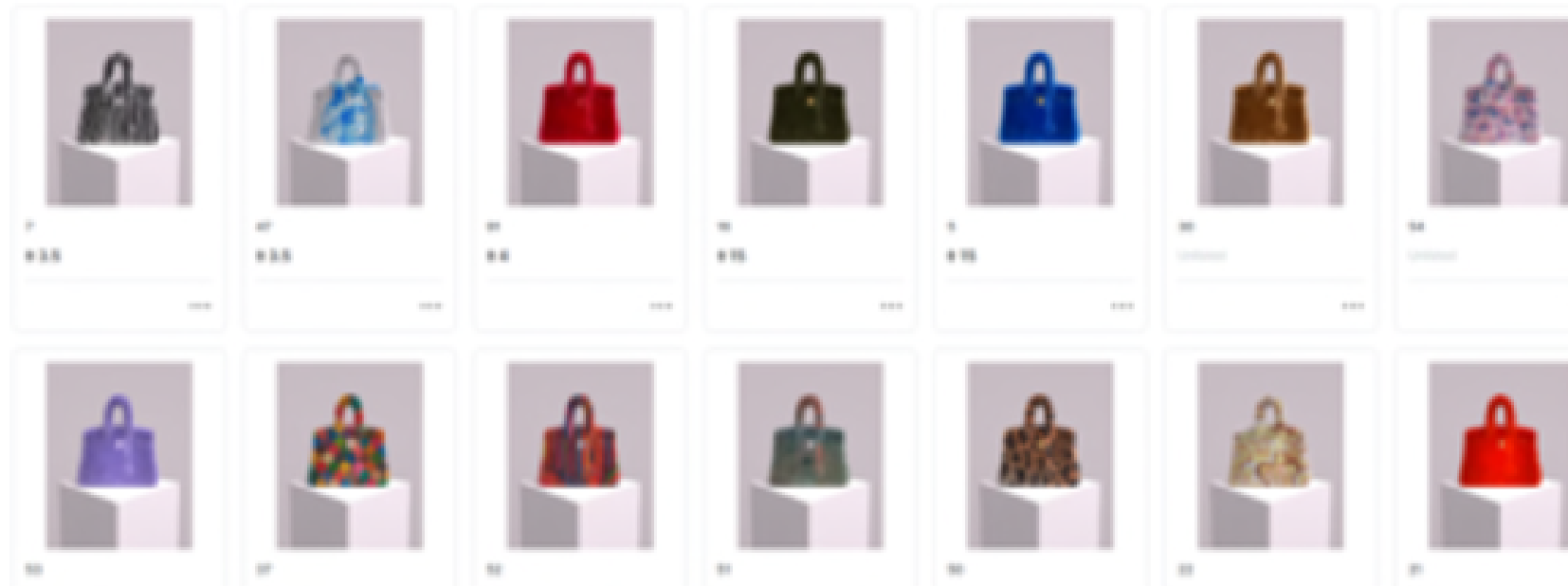


HERMÈS INTERNATIONAL V MASON ROTHSCHILD

U.S. District Court for the Southern District of New York

No. 1:22-cv-00384

“METABIRKIN”



NIKE INC. V STOCKX LLC.

- StockX offered NFTs tied to digital images, including the Nike “swoosh” mark, and to actual, physical Nike footwear
- Whether a trademark holder’s rights in physical goods/services extends to virtual equivalents?
- Whether Doctrines of First Sale or Fair Use allow consumers to sell digital versions of products without violating the IP owner’s rights in physical products?
- Potential technical limitations to remedies for unauthorized duplication of NFTs
 - “Burning” NFTs



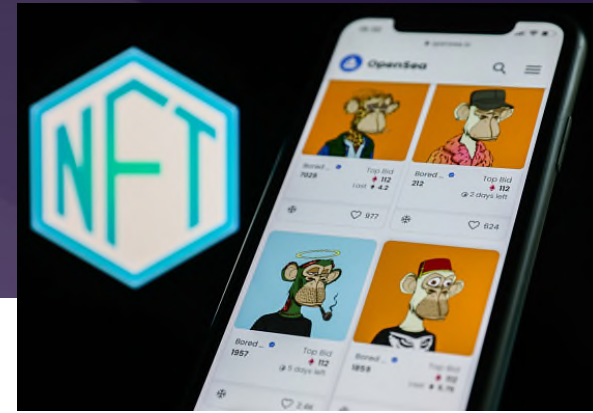
MIRAMAX LLC. V TARANTINO

U.S. District Court for the Central District of California

- Quentin Tarantino endeavored to sell a *Pulp Fiction* NFT collection, where each NFT represented a movie chapter, including scanned pages from the original script
 - Miramax LLC.'s registered trademark PULP FICTION does not cover digital works
- Whether the unregistered trademark PULP FICTION is sufficiently broad to cover new digital works?
- Whether an NFT can be the proper subject of trademark law?
 - Is an NFT a “communicative product”?



BORED APE YACHT CLUB CASE



- ***Yuga Labs Inc v. Ripps*, U.S. District Court for the Central District of California, No. 2:22-cv-04355**
- Yuga Labs Inc. has sued artist Ryder Ripps for trademark infringement.
- Ripps claims "appropriation art" meant as criticism and protected by the First Amendment. doubled down on his allegations that the NFTs contain coded racist imagery
- An investigation has been launched to investigate whether Yuga Labs violated federal securities laws.

QUESTIONS?

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