



# MetaVerse and NFTs - The uncharted frontier and opportunities for Brands

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*What brands need to know about NFTs, the metaverse and associated Intellectual Property rights*

Non Fungible Tokens / NFTs are unique digital assets that are stored on a blockchain or in a digital ledger. As the name suggests, being 'Non-Fungible' it cannot be duplicated and is not interchangeable. Each NFT has unique properties which are stored in the token's metadata, and this makes it limited to the extent in some cases having only one copy and hence draws its value from being scarce. The history of ownership i.e. the authenticity and the origin of an NFT can be verified on the blockchain through a platform like Ethereum from 'smart contracts' which are software codes that authenticate the ownership and regulate their transferability. Unlike fungible tokens like money, NFTs cannot be split into smaller denominations.

NFTs which represent ownership in the digital world can consist of anything from digital goods like pieces of art, collectables like stamps, coins, bags, footwear, clothing, gems, game items, real estate, social media posts, clips of top shot games, photos, trademarks, domain name and even complex financial instruments to various other things that are available in the physical world.

## **The slow rise of NFTs**

It is understood that the first NFT was created as early as 2014 called *Quantum* by Kevin McCoy and Anil Dash. However, NFTs did not gain popularity until 2020; the wildly popular CryptoPunks created by Larva Labs in 2017 could be claimed for free. Its popularity only boomed in 2021 when the cheapest CryptoPunks was worth US\$350K. In May 2021, a collection of 9 Punks was sold at Christie's for a whopping amount of \$16.9M. Sotheby's sold a rare alien Punk for \$11.8 M in June 2021. It is interesting to note that the financial giant VISA have purchased a CryptoPunk in August 2021 at a whopping price of US\$150,000 as an addition to their collection in commerce.

The CryptoPunks are now considered the holy grail for any NFT collector.

Interestingly, these Punks can be seen as profile pictures on social media platforms just like the other billion-dollar NFTs Bored Apes – aka (Bored Ape Yacht Club)

## **NFT, Metaverse and Fashion**

NFTs are gaining popularity as Metaverse gears; luxury fashion brands are experimenting and launching digital assets for consumers for avatars in the metaverse. Consumers are riding the wave of purchasing fashion NFTs for their avatars and dressing in the digital assets and accessories in the metaverse.

In 2021, Burberry partnered with Mythical Games launching the NFT collection in the multiplayer party game Blankos Block Party featuring digital vinyl toys known as Blankos. Each of these NFTs comes with proof of verified ownership and authenticity from Burberry. The brand also intends to launch its own branded in-game NFT accessories, including jetpacks, armbands and pool shoes.

Similarly, Dolce & Gabbana launched its own physical and meta-physical collection of NFTs called the *Collezione Genesis*<sup>3</sup> on the Polygon blockchain. It features entirely hand-made, museum-grade items across *Alta Moda* (women), *Alta Sartoria* (men), and *Alta Gioielleria* (high jewellery).

Gucci offered new NFT products including its one of the kind sneakers. To keep up with the trend, Nike acquired RTKFT Studios - a shoe company that makes NFTs and virtual sneakers for the metaverse.

Louis Vuitton which designed skins for the game League of Legends joined the NFT bandwagon with the launch of its game 'Louis: The Game'. The game features 30 embedded NFTs that have been designed by the famous NFT artist Beeple. These NFTs can only be found and collected by playing the game.

### **Intellectual Property Rights and NFTs**

The tenet of Intellectual Property (IP) rights is exclusiveness and monopolistic rights be it trademark, copyright or patents. With NFTs being minted for nearly everything from art collectables to shoes, clothes, bags and real estate, it becomes imperative for owners to understand and protect their IP rights in this space.

As NFTs can be minted by anyone, the possibility of misuse of trademarks and/or infringement of IP rights loom large. We have seen many big brands protecting their marks in the relevant classes through trademark registration. A few examples of brands that have sought protection are Nike, Crocs, Ralph Lauren, Gap, McDonald's, and NYSE .

According to [Finbold](#), in 2021 there have been 1,263 NFTs-based trademark applications filed before the United States Patent and Trademark Office (USPTO) which is a 421 fold growth in NFT based trademark applications filed from three filings in 2020. In 2021, the highest trademark filing was recorded in December at 407 filings. According to the [data](#), nearly 15 applications are filed per day in 2022.

### **What IP issues to anticipate?**

As the NFT market is largely an unregulated sector, the enforcement of IP rights is a grey area.

The very authenticity of an NFT can be in question if the same is not minted or created by the genuine owner. For eg., every NFT can be verified on the blockchain through a smart contract. Issues can arise if this information is not correct and NFTs have been minted or created by any other person who does not have the permission to create such NFTs leading to unauthorized NFTs.

Further, with many virtual worlds like Cryptoboxets, Decentraland, Roblox, Sandbox, Sims, Somnium Space, SuperWorld, and Zepeto, there can arise issues relating to misuse of IP rights and licenses. Proper due diligence needs to be conducted before venturing into the virtual world based on the terms and conditions and policies in place.

In fact, there have been instances of unauthorized minting of NFTs by third parties leading to IP issues. For eg. The luxury brand Hermes is suing Mason Rothschild, a digital artist, for infringement of its Birkin bags [Hermès International, et al. v. [1:22-cv-00384 (SDNY)]. The brand has taken Mason Rothschild to the court for minting and selling NFTs of its Birkin bags which Mason Rothschild has termed as 'MetaBirkin'. Hermes has indicated confusion about the source of origin.

Similarly, Nike which has filed a trademark application for virtual goods, has sued StockX, an online retail marketplace, for infringement of its trademark in the virtual space for selling Nike sneakers as NFTs. As per the lawsuit Nike contends that "*Without Nike's authorization or approval, StockX is 'minting' NFTs that prominently*

*use Nike's trademarks, marketing those NFTs using Nike's goodwill, and selling those NFTs at heavily inflated prices to unsuspecting consumers who believe or are likely to believe that those 'investible digital assets' (as StockX calls them) are, in fact, authorized by Nike when they are not."*

Both are pending adjudication and we are yet to see how the Courts protect IP rights of the brands in the virtual space.

Similarly, copyright issues can arise as the very authenticity of the NFTs can be in question if the initial entry in the blockchain is false or has errors. Other issues can arise such as unauthorized exploitation of copyright, publicity rights, and moral rights involving NFT content.

However, whether copyright in an NFT will get transferred/ assigned to a buyer and/or to what extent copyright or the IP rights in a work will be transferred can be covered in the smart contract. In the absence of an explicit term of assignment in the smart contract, the buyer will have limited rights.

### **Additional means to protect NFT IPs in the metaverse**

Platforms such as OpenSea, Mintable adhere to stringent guidelines to take down NFTs that are involved in trademark infringement. The basic requirement for a takedown notice under DMCA are – Indication of the IP infringed and where the infringing material is appearing, a properly signed takedown notice, contact information and good faith belief that infringing material is unauthorized.

### **Metaverse and NFTs - Promising frontiers for brands**

There are several ways that brands can benefit from the metaverse. We are already seeing big brand owners going ahead and protecting their IP rights in the metaverse and having virtual goods in the metaverse. Interestingly, many brand owners have joined Roblox, an online game platform and game creation system, which has a huge consumer base of nearly 202 million where they sell virtual products to consumers' avatars.

Gucci teamed with Roblox for selling virtual sneakers for US \$12.99 a pair in this virtual world. Prices for these quickly rose and Gucci made headlines when it sold a digital purse in the Roblox virtual world for 350,000 Robux, equivalent to roughly US \$4,200. The physical version of the same purse could be bought in a Gucci store for about US \$3,500. This shows the untapped consumer base and selling capacity for brand owners in the metaverse.

Further, there also lies the opportunity to license products. *According to the Licensing International organization, it represents the last great licensing market open to the industry and could represent as much as a 40 percent increase in volume in licensing in the near future.* There is a huge licensing market for brand owners with an unlimited number of consumers and growth in sales.

The metaverse and the NFTs space are uncharted territories that are constantly evolving and currently, there are no precedents to fall back on. The future of NFTs and IP laws will depend upon how the courts interpret these spaces.

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