

Trademarks in the Metaverse: Brand Protection for Virtual Goods & Services

Article By:

Benjamin D. Schwartz

Last year the tech giant formerly known as “Facebook” renamed itself “Meta” and announced its intention to create a virtual society known as the “Metaverse.” The Metaverse will almost certainly offer an e-commerce experience that can be found only in a three-dimensional digital world. The Metaverse has not yet arrived, but many businesses are preparing to take advantage of the e-commerce market opportunities in the new virtual world.

Digital Assets

While there is much excitement and skepticism surrounding existing digital assets, like cryptocurrencies and non-fungible tokens (“NFTs”), many individuals and corporations are ramping up their efforts to market and provide virtual goods and services in the Metaverse. This is evidenced by the surging number of new applications submitted to the United States Patent and Trademark Office (“USPTO”) seeking to register trademarks for use of their brand in virtual reality.

These applicants hail from a wide variety of industries, and although some brand owners may have decades-long trademark rights in the “real world,” they are flocking to secure corresponding rights in virtual goods and services they intend to offer in the Metaverse. Filing separate applications for existing trademarks that cover distinct virtual goods and services will ensure brand owners that such rights are recognized in a virtual marketplace like the Metaverse.

Just last week, McDonalds filed several trademark applications for “MCDONALDS” covering, among other goods and services, the operation of a virtual restaurant featuring actual and virtual goods. Moreover, McDonalds is seeking registration of its mark “MCCAFE” in connection with entertainment services such as online actual and virtual concerts.

Trademark Applications for the Metaverse

While McDonalds may be one of the most recent major corporations to file trademark applications seeking brand protection in the Metaverse, it is not the first – and likely not the last. Other well-known brands that have filed applications covering virtual or digital goods and services include the following:

- Panera Bread – application for PANERAVERSE, covering its virtual food and beverage items

for use in virtual worlds and other retail store services featuring virtual goods;

- Nike – applications for NIKE, JUST DO IT, JORDAN, AIR JORDAN, the Nike swoosh logo design mark, the Jordan silhouette logo, and combinations thereof, covering various virtual goods and services;
- The Brooklyn Nets – applications for NETAVERSE, covering broadcast entertainment services and clothing goods related to the NBA team;
- Walmart – applications for WALMART, covering the creation and sale of virtual goods such as electronics, toys, decorations, sporting goods, and personal care products;
- Crocs – application for CROCS, covering footwear, clothing and accessory goods, and entertainment services in virtual environments;
- Skechers – applications for SKECHERS, covering footwear, clothing, and backpacks for use in online virtual worlds;
- Jay-Z – application for JAY-Z, covering music, clothing, and jewelry goods for use in online virtual worlds; and
- The Coachella Music Festival, application for COACHELLA, covering downloadable audio and video recordings featuring live musical performances authenticated by NFTs.

Protection for Virtual Goods & Services

The owners of the above-filed applications span various industries and, importantly, are not limited to companies that currently offer purely digital goods and services. Given the spike in trademark applications at the USPTO for virtual goods and services since the announcement of the Metaverse, it is clear many envision the creation of a new online virtual reality marketplace inherent in the Metaverse.

While the Metaverse is digital and will take place in virtual reality, its creation undoubtedly impacts trademark rights in the real world.

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