Many brands have taken steps to proactively protect their intellectual property rights for use in connection with metaverse-related goods and services. This may include filing new trademark registrations or purchasing blockchain domains. But enforcing those rights poses a significant challenge. In this alert, we discuss ways to identify and combat trademark and copyright infringement in the metaverse.

**What is The Metaverse?**

The metaverse is a persistent, digital environment that will allow individuals to seamlessly transition between their physical and virtual worlds. While much of it remains aspirational, some key trends are already emerging:
• It will feature immersive virtual worlds built on blockchain technology that will host vibrant digital economies;

• Governance will be decentralized and autonomous;

• It will rely on next-generation consumer electronics with augmented and mixed reality capabilities that will serve as a gateway or bridge between physical and virtual experiences;

• It will feature advanced avatars; and

• Its full potential will likely require interoperability between virtual environments.

**Challenges For IP Enforcement**

The decentralized nature of the metaverse poses perhaps the greatest challenge to brands and intellectual property owners. To understand why it helps to consider the legal framework and protocols that have emerged to prevent and remedy infringement on the “traditional” Internet. Today, most websites are hosted on servers maintained by specialized web services providers. Under the Digital Millennium Copyright Act and Section 230 of the Communications Decency Act, these hosting providers are generally not liable for infringing content on their servers so long as they act promptly to remove it upon receiving proper notice. Thus, when a brand discovers infringing content on a site, they can contact the hosting provider, demand that the content be deactivated or removed, and the hosting provider can simply delete the infringing content.

Similarly, social media networks have developed robust policies and processes to police intellectual property infringement. Assuming a brand can convince a network to take action, it is relatively easy for the network to suspend or deactivate the infringing content.

In contrast, blockchain-based platforms, or “Web3,” do not reside on a single server. Rather, content is distributed and replicated across an essentially infinite number of servers via a peer-to-peer network. As such, there is no single point of authority, such as a hosting provider or ICANN, that can “switch off” infringing content. Moreover, once content is on the blockchain, it cannot be deleted; it is there forever.

**So What is a Brand To Do?**

1. Be There: There is, unfortunately, no easy way to monitor virtual worlds, such as Decentraland and The Sandbox, for infringing content. Trademark searching and monitoring services generally do not have the capability to see or scrape content in Web3 platforms, and major search engines are unlikely to capture blockchain code in their common law web searches. Until specialized tools are developed, one of the best ways to monitor the metaverse for infringement is to be there: establish a routine presence in popular metaverse worlds like Decentraland or The Sandbox; monitor major discussion boards; and monitor transactions on major public blockchains.
2. Target the Secondary Market: While Web3 platforms are decentralized and autonomous, many metaverse service providers are traditional entities. NFT marketplaces like OpenSea, for example, have control over the content that appears on their marketplaces for resale and have adopted policies and procedures to remove infringing content. While pulling infringing content off of secondary marketplaces can help eliminate or reduce the incentive for infringers to traffic in infringing content, it is important to note that these marketplaces do not have control over the underlying assets. Thus, even if removed from a marketplace, the infringing content will still remain on the blockchain.

3. Play Nice: One of the few sure ways to control infringing content is to acquire it. Most things on Web3 are available for purchase at the right price, but such a strategy may quickly become costly while incentivizing further infringement.

4. Be Proactive: As noted above, many brands have already taken steps to file metaverse-related trademark applications and purchase blockchain domains. While not a cure-all, these are important steps for brands to take.

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