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# NFTs and Brands in the Metaverse

World Law Group IP & IT webinar

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Privat und vertraulich

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Merely a concept

□ Term: Neal Stephenson's "Snow Crash"

□ 3D successor to today's internet





"...massively scaled and interoperable network of real-time rendered 3D virtual worlds which can be experienced synchronously and persistently by an effectively unlimited number of users with an individual sense of presence, and with continuity of data, such as identity, history, entitlements, objects, communications, and payments."

(Matthew Ball)

The metaverse is not:

- □ Virtual reality (VR)
- □ Augmented Reality (AR)
- □ web 3.0 & blockchain technology



Source: Christoph Scholz (CC BY-SA 2.0)





Source: Raxium

### **Events in the metaverse**

- **Concerts**
- **Art shows**
- **Trade fairs**
- □ Sightseeing / tourism



Source: Reflect in The Gallery by Jeff Berezny



12,3 million concurrent players participated live in the first event of Travis Scott's Astronomical concert in Fortnite in April 2020

### **Platforms for virtual worlds**

- Centralized virtual-world platforms
  - □ Fortnite (Epic Games), Minecraft (Mojang Studios □ Microsoft), Roblox (Roblox Corporation)
  - □ Example: Some statistics about Roblox
    - □ Market capitalisation around \$ 20 billion (as of 2 December 2022)
    - 9.5 million developers on the Roblox platform
    - > 40 million games
    - Daily active users at around 43.2 million
    - □ 67% of users are under 16



## **Platforms for virtual worlds**

- Decentralized virtual-world platforms
  - □ The Sandbox (Animoca), Decentraland (Decentraland Foundation)
  - Example: Some statistics about The Sandbox
    - Market cap at about \$ 1 billion
    - □ ~39,000 daily active users
    - 4.1 million total wallets
    - 22,267 land owner



Source: sandboxgaming.de

### **Economical figures**

- □ Economically very interesting!
- □ Some economic figures from June 2022:
  - □ "By 2030, the value of the metaverse could reach ~ \$ 5 trillion"
  - E-commerce is the main driver (up to \$ 2.6 trillion), followed by the academic virtual learning market (up to \$ 270 billion), advertising (up to \$ 206 billion) and gaming (up to \$ 125 billion)
  - Corporations, VC and private equity have already invested more than \$ 120 billion in the metaverse in the first 5 months of 2022
  - Facebook changed its company name to Meta
  - □ Meta itself invested \$ 10 billion in developing its platform
  - I Microsoft acquired gaming company Activision Blizzard for \$ 69 billion
  - $\Box \sim 11$  million extended reality headsets were shipped so far (80% produced by Meta)



# 2 What are NFTs?

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## What are NFTs?

# Means / technology enabling "digital ownership" of assets Examples







PFPs

**Digital Fashion** 

Generative Art

### NFTs as collectibles

- Digital scarcity
- **Trustless trading**
- Π Traits with different rarities



Q. Search items, collections, and accounts

OpenSea

Explore Drops Stats Resources (2)

1

D E

## **NFTs and blockchains**

- □ Tokens existing on a blockchain
- □ Typically: pointer to some location / content

□ Not: the image itself



Source: opensea.io / Bored Ape Yacht Club #7763

## NFTs and IP

- $\Box$  Owning an NFT  $\neq$  owning the IP in the associated asset
- □ Terms & conditions handled off-chain
- Different types of licences



(Initially) restrictive license



Broad license (incl. commercial use)



(Now) public domain

## NFTs as digital identities in the metaverse

PFPs on social media platforms (social status)

- □ Access to token-gated services / events (membership)
- □ Avatars on third-party platforms (interoperability)



## World of Women - Verified collection by OpenSea Woman #7305

#### Creator

Oxc9b6...bdb1 ↗ WorldofWomen · Ethereum

#### Owner



Gwyneth Paltrow @GwynethPaltrow

#### Description

World of Women: 10,000 unique, cool and diverse Women living on the Blockchain.

#### Collection



World of Women by WorldofWomen Verified collection by OpenSea

A community celebrating representation, inclusivity, and equal opportunities for all. United by a first-of-its-kind collection, featuring 10,000 artworks of diverse and powerful women....



#### See more

#### Glenfiddich

- Partnership with BlockBar to launch a series of 15 limited edition liquor NFTs.
- The offering that bridges physical and digital marketplace as each NFT corresponds to a physical bottle:
  - When purchasing the NFT, the buyer becomes the owner of the physical product represented by the NFT, with the NFT serving as a digital receipt that verifies the buyer's ownership and the authenticity of the product.
  - □ The buyer then has the choice at any time:
    - I. to resell the NFT; or
    - II. to redeem it for the physical version NFT then burned.
- BlockBar is responsible for storing the product and delivering it to the buyer (if requested).





#### **Monkey Shoulder**

Another collaboration between WG&S, BlockBar and Bored Ape Yacht Club to launch Monkey Shoulder into the NFT marketplace:

- I. It started with a ballot of Bored Ape holders where 10 winners were selected to put their own ape onto a limited edition of 100 MS bottles
- II. Bored Ape holders also received their first BlockBar bottle of Monkey Shoulder Original Malt Whisky for free
- III. All existing BlockBar NFT holders received 50% off bespoke, Monkey Shoulder NFT bottles
- BlockBar to store the bottles in its facility in Singapore every NFT can be exchanged for the physical product, to be shipped anywhere in the world (and the NFT to be burned).





## **BURBERRY** in the metaverse

#### Blankos Block Party 2021 & 2022

- In the summer of 2021, Burberry partnered with Mythical Games launching its first Blankos Block Party game.
- The limited-edition items could be purchased, upgraded and sold:
  - I. 750 of the "Burberry Blanko" character \$299.99 each;
  - II. 1,500 editions of a jetpack accessory \$99.99 each
  - III. unlimited number of \$49.99 pool shoes and \$24.99 arm bands
- The Burberry Blanko sold out in <u>less than 30 seconds</u>, the jetpack sold out in under two minutes.
- In the summer of 2022, Burberry released a new unicorn character called Minny B
  - I. The collection included Burberry branded accessories, which can be added to the player's virtual portfolio
  - II. Players who owned the first NFT character, received a free Monogram bucket hat





## **BURBERRY** in the metaverse

#### **BURBERRY X MINECRAFT**

- I November 2022 launch of the collaboration between Burberry and Minecraft
  - □ in-game adventure
  - □ capsule collection
  - real-world experience

#### Launch online and in selected stores

- Iimited edition 15-item capsule collection
- gamers can dress their avatars in any of the 15 new pieces in the Burberry collection
- classic check and trenchcoats available in the Overworld and Minecraft motifs in the real world
- The drop also includes an exclusive Burberry x Minecraft Xbox.







# **3** Example of a use case

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### **Use Case: Fashion & Brands**

Example: Metaverse Fashion Week (Decentraland)

- Brands like DKNY, Tommy Hilfiger, Paco Rabanne, Dolce & Gabbana, Etro, Charles & Keith and Prive Porter present their collections
- Shopping of "digital twins"
  - ☐ fashion (Gucci, Nike, Dolce & Gabbana)
  - automotive (Ferrari)
- □ What is needed: money in crypto-currency

#### Buy digital fashion and get the physical twin

What if you could match your virtual and real wardrobes, uniting your image across world?





The Gold Glass Dress NFT designed by Dolce & Gabbana and constructed by UNXD, a digital marketplace.

Source: UNXD and Dolce & Gabbana



Source: FAZ.net (Screenshot by Gabriel Rinaldi)



Source: metaversefashionweek.com

Source: wwd.com (Courtesy Shot by Lisa Lockwood)

### Legal issues: trademarks

#### **Trademark law:**

- Does a trademark that designates physical goods extend to the virtual versions of those goods?
- Which classes cover the virtual goods?
  - EUIPO: class 9 "downloadable digital files authenticated by non-fungible tokens"
  - Maybe recommendable to include additional classes: class 41 (services for entertainment purposes) and class 42 (computer services et al.)





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#### Virtual goods, non-fungible tokens and the metaverse

#### June 23, 2022 - practice\_tips

Virtual goods, non-fungible tokens and the metaverse



The Office is increasingly receiving applications containing terms relating to **virtual goods** and **non-fungible tokens** (NFTs). This is the approach that the Office is taking for classification purposes.

- Virtual goods are proper to Class 9 because they are treated as digital content or images. However, the term virtual goods on its own lacks clarity and precision so must be further specified by stating the content to which the virtual goods relate (e.g. downloadable virtual goods, namely, virtual clothing).
- The 12th Edition of the Nice Classification will incorporate the term *downloadable digital files authenticated by non-fungible tokens* in Class 9. NFTs are treated as unique digital certificates registered in a blockchain, which **authenticate** digital items but are distinct from those digital items. For the Office, the term *non fungible tokens* on its own is not acceptable. The type of digital item authenticated by the NFT must be specified.

Services relating to virtual goods and NFTs will be classified in line with the established principles of classification for services.

The Office's approach is set out in the 2023 draft Guidelines on which a range of stakeholders have until 3 October this year to comment.

## Legal issues: property rights with digital goods - NFTs

#### Acquisition of ownership of digital assets by NFTs

- □ NFTs as digital ownership certificates for virtual objects?
- □ (Immutably) saved within a blockchain
- □ Smart Contracts match the NFTs to a certain wallet (access right)
- □ NFTs (or rather the access rights) can be transferred (sold)





Photo: Rtfkt x Nike

#### How to deal with trademark infringement in the metaverse?

- Does a trade mark designating physical goods also cover their virtual version?
- Would physical and virtual goods be considered identical or similar?
- Can TM owners rely on likelihood of confusion or do they also need to rely on reputation?



### The protection of trademarks in the metaverse

- 12th Edition of Nice Classification includes "downloadable digital files authenticated by non-fungible tokens" (Class 9). Non fungible tokens, as such, not acceptable.
- The term "virtual goods" on its own lacks precision and must be specified (e.g. downloadable virtual goods, namely, virtual clothing).

If exploitation of the trade mark in the virtual and real world: physical goods + classes 9, 35, 41 and 42



## **EU - Accepted Specification**

#### Class 9

Downloadable software, namely Non-fungible tokens (NFTs) or other digital tokens based on blockchain technology; downloadable digital graphics; Downloadable software, namely digital collectibles being art, photographs, clothing and accessories, images, animation, and videos; downloadable clothing and accessories; downloadable interactive characters, avatars and skins; Downloadable software, namely virtual goods being clothing, footwear, headgear, bags, purses, wallets, umbrellas, watches, jewellery, eyewear and sunglasses, cases and covers holders for mobile phones and tablets, furniture, crockery, toys, perfume, toiletries and cosmetics, textile goods, pet accessories; virtual bags, textile goods, clothing, headgear, footwear, eyewear all displayed or used online and/or in virtual environments; video games and downloadable video game software; downloadable digital materials, namely, audio-visual content, videos, films, multimedia files, and animation, all delivered via global computer networks and wireless networks.

#### Class 35

Retail and wholesale services for clothing, footwear, headgear, bags, purses, wallets, umbrellas, watches, jewellery, eyewear and sunglasses, cases and covers holders for mobile phones and tablets, printed matter, furniture, crockery, toys, perfume, toiletries and cosmetics, textile goods, pet accessories; online retail services related to fashion accessories, clothing and related accessories; Retail store services and/or online retail store services in relation to virtual merchandise namely clothing, footwear, headgear, bags, purses, wallets, umbrellas, watches, jewellery, eyewear and sunglasses, cases and covers holders for mobile phones and tablets, printed matter, furniture, crockery, toys, perfume, toiletries and cosmetics, textile goods, pet accessories; holders for mobile phones and tablets, printed matter, furniture, crockery, toys, perfume, toiletries and cosmetics, textile goods, pet accessories; presentation of goods on communication media, for retail purposes.

#### Class 41

Providing online non-downloadable digital collectibles namely art, photographs, clothing and accessories, images, animation, and videos; providing on-line information about fashion shows and digital games; entertainment services, namely providing on-line, non-downloadable virtual content namely clothing, footwear, headwear, bags, purses, wallets, umbrellas, jewellery, eyewear and sunglasses, cases and covers holders for mobile phones and tablets, printed matter, furniture, crockery, toys, perfume, toiletries and cosmetics, textile goods, pet accessories, for use online and/or in virtual environments; providing online video games; entertainment services, namely, providing online electronic games, providing a website with non-downloadable computer games and video games, computer interface themes, enhancements, audio-visual content in the nature of music, films, videos, and other multimedia materials; provision of online information in the field of computer games entertainment.

## **UK - Accepted Specification**

#### Class 9

Downloadable software, namely non-fungible tokens (NFTs) or other digital tokens based on blockchain technology; downloadable digital graphics; downloadable digital collectibles; Downloadable software, namely downloadable clothing and accessories; Downloadable software, namely downloadable interactive characters, avatars and skins; downloadable virtual goods; Downloadable software, namely virtual bags, textile goods, clothing, headgear, footwear, eyewear all displayed or used online and/or in virtual environments; video games and downloadable video game software; downloadable digital materials, namely, audio-visual content, videos, films, multimedia files, and animation, all delivered via global computer networks and wireless networks.

#### Class 35

Retail services and wholesale services in connection with clothing, footwear, headgear, bags, purses, wallets, umbrellas, watches, jewellery, eyewear and sunglasses, cases and covers holders for portable electronic devices, printed matter, furniture, crockery, toys, perfume, toiletries and cosmetics, soft furnishings, bed clothes and blankets, pet products; online retail services related to fashion, clothing and related accessories; Retail store services and/or online retail store services featuring virtual merchandise namely clothing, footwear, headgear, bags, purses, wallets, umbrellas, watches, jewellery, eyewear and sunglasses, cases and covers holders for portable electronic devices, printed matter, furniture, crockery, toys, perfume, toiletries and cosmetics, soft furnishings, bed clothes and blankets, pet products; presentation of goods on communication media, for retail purposes.

#### Class 41

Providing online information about fashion shows, digital games and sustainability; online video games; entertainment services, namely, providing online electronic games and provision of non-downloadable computer games and video games, computer interface themes, enhancements, audio-visual content in the nature of music, films, videos, and other multimedia materials via a website; provision of online games services via an interactive website.

#### Class 42

Providing online non-downloadable digital collectibles namely art, photographs, clothing and accessories, images, animation, and video; providing on-line, non-downloadable virtual content for use in a virtual world namely clothing, footwear, headwear, bags, purses, wallets, umbrellas, jewellery, eyewear and sunglasses, cases and covers holders for portable electronic devices, printed matter, furniture, crockery, toys, perfume, toiletries and cosmetics, soft furnishings, bed clothes and blankets, pet products, for use online and/or in virtual environments.



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#### **Bolstering protection**

Brand owners are registering key brands for virtual goods / services

Better enforcement

Block third parties

Public signal of intention to use in metaverse

#### Licensing potential

#### Absolute grounds for refusal

- □ Is the perception of the relevant consumer the same in the real world and in the metaverse?
- Should the concepts of distinctive character and descriptiveness apply in the same way to physical goods and to virtual goods?

□ How to prove acquired distinctiveness?

□ Is it possible to have 3D marks in the metaverse?

#### The use requirement

□ Where should brand owners register?

How to prove the use of virtual goods (only in the virtual world, physical world, or combined use)?

□ "Genuine use" of trade marks in class 9?

□ What is the relevant territory?

#### Trade mark infringement in the metaverse?

Mere reproduction of a trade mark in the metaverse without any association to a digital product or service

Offering an avatar design or accessory service where people can have a brand name for or the avatar

Selling branded virtual avatar clothing or selling an avatar which includes the trade mark

Offering goods or services in the metaverse under a third party trade mark, e.g. a metaverse storefront

#### **Metaverse updates**

- Brands and NFTs Christian Tenkhoff (TWG) / Magdalena Borucka (TWUK) / Louise Popple (TWUK)
- NFTs and copyright: (More) copyright disputes ahead? Jonathan Kropp (TWG)
- Detenting the Metaverse Possibilities for companies in another world Phillip Rektorschek (TWG) / Eva Steinmüller (TWG)
- Delay to earn: NFTs. IP and the future of gaming Calum Parfitt (TWUK)
- 200 Billion USD lost: What happened in one of the worst weeks for the crypto-markets? Miroslav Duric (TWG) / Christian Tenkhoff (TWG)
- Elling strategies for brands in the Metaverse Magdalena Borucka (TWUK) / Christian Tenkhoff (TWG)
- NFTs and real world assets Clare Reynolds (TWUK)
- (Virtual) land acquisition and NFT land in the Metaverse Christopher Bakier (TWAT)
- Metaverse. Mixed Reality and a whole new business world? Janine Krupa-Soltane (TWG)
- What happens when a smart contract is breached? Emma Allen (TWUK)
- Clearing the way by Chinese courts? Comments on the first NFT copyright infringement decision made by the Hangzhou Internet Court Thomas Pattloch (TWCN)
- NFT and virtual objects like "Metabirkin": a challenge for rightsholders Marc Schuler / Inès Tribouillet (TWFR)
- Am Linvesting or trading in crypto, and why should I care? Joshua Boughton / Olivia Davies (TWUK)
- Bored Apes: a first look at Yuga's lawsuit against Ryder Ripps Christian Tenkhoff (TWG) / Jonathan Kropp (TWG)
- Al-generated works: a dead end from a copyright law perspective Marc Schuler (TWFR) / Inès Tribouillet (TWFR)
- EUIPO: On virtual goods, non-fungible tokens and the metaverse Christian Tenkhoff (TWG)
- Digital health in the metaverse: legal and regulatory challenges in the virtual world Alison Dennis (TWUK) / Alice Matthews (TWUK)
- Pre-judgment attachment on an NFT in the Netherlands Maarten Rijks (TWNL) / Nicky Willemsen (TWNL)
- Decryption understanding virtual assets regulation in the EU. UAE and UK Verena Ritter(TWG) / Charlotte Hill (TWGUK) / Katie Fry-Paul (TWGUK)
- U Yuqa Labs v Ryder Ripps the trade mark perspective Christian Tenkhoff (TWG) / Magdalena Borucka (TWUK)
- □ Space law the next frontier for international disputes? Nick Storrs (TWUK) / Nicole Ng Yuen (TWUK)
- Yuga Labs v Ryder Ripps Franco-German cross-analysis of the copyright aspects of the case Inès Tribouillet (TWFR) / Jonathan Kropp (TWG)
- Why are smart contracts the smart choice for financial services? Katie Fry-Paul (TWUK) / Daniel Hirschfield (TWUK) / Miroslav Duric (TWG)
- <u>The Metaverse: brands. avatars and digital fashion Part I Christian Tenkhoff (TWG)</u>
- Disputes Quick Read: Ethereum Merge what legal issues arise? Emma Allen (TWUK) / Ben Jones (TWUK)
- Licensing of NFT collections: The Moonbirds are released to the public domain. But why? Jonathan Kropp (TWG) / Christian Tenkhoff (TWG) / Inès Tribouillet (TWFR)
- The DSA advertising, dark patterns and recommender systems Maarten Rijks / Annemijn Schipper (TWNL)
- The Metaverse: brands, avatars and digital fashion Part II Christian Tenkhoff (TWG) / Magdalena Borucka (TWUK)
- And many, many more...

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