

Trademarks and Non-Fungible Tokens: New Frontiers for Trademark Law

Authors : Dima Basma

Abstract : The unprecedented expansion in the use of Non-Fungible Tokens (NFTS) has prompted luxury brand owners to file their trademark applications for the use of their marks in the metaverse world. While NFTs provide a favorable tool for product traceability and anti-counterfeiting endeavors, the legal ramifications of such abrupt shift are complex, diverse, and yet to be understood. Practically, a sizable number of NFT creators are minting digital tokens associated with existing trademarks, selling them at strikingly high rates, thus disadvantaging trademark owners who joined and are yet to join the meta-verse world. As a result, multiple luxury brands are filing confusion and dilution lawsuits against alleged artists offering for sale NFTs depicting reputable marks labeling their use as “parody” and “social commentary.” Given the already muddled state of trademark law in relation to both traditional and modern infringement criteria, this paper aims to explore the feasibility of the current system in dealing with the emerging NFT trends. The paper firstly delves into the intersection between trademarks and NFTs. Furthermore, in light of the striking increase in NFT use, the paper sheds critical light on the shortcoming of the current system. Finally, the paper provides recommendations for overcoming current and prospective challenges in this area.

Keywords : trademarks, NFTs, dilution, social commentary

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