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How to Protect Your Brand in the Metaverse

Q&A Handbook

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How to Protect Your Brand in the Metaverse: Q&A Handbook

The Metaverse is a virtual space that allows us to interact with people worldwide in an immersive environment. This alternative reality is impacting the way people's rights are protected and in particular intellectual property.

Accordingly, the Intellectual Property area of ECIJA Mexico presents this guide aimed at addressing the safeguarding of trademarks in the dynamic and increasingly relevant digital environment.

1. What is the Metaverse?

According to the *World Compliance Association*, the Metaverse is "an infrastructure channeled through an intelligent network that through Artificial Intelligence systems, recaptures and generates real-time data from each connected user offering a complete recreation of the natural reality mediated by haptic sensory and cognitive technology, where any action can be carried out by its users without limitations, interacting with other users and Artificial Intelligences with an own economic system under *blockchain* systems in order to generate a virtualized state within an absolute network society".¹

It's important to note that this definition of the Metaverse goes beyond being just another space in cyberspace. It encompasses critical elements like a distinct society, actions with potential legal consequences, a unique economic system, and even the concept of a virtualized state.

2. Are there laws in the Metaverse?

Currently, the Metaverse lacks specific regulations, posing a significant challenge for legislators worldwide. Developing laws for the Metaverse requires special attention not only to traditional legal aspects but also to digital rights, data protection, privacy, intellectual property, and other key factors in the digital era.

3. What is the importance of e-commerce in the Metaverse?

In the Metaverse, e-commerce is a common activity, involving the buying and selling of goods and services online. This practice has gained popularity across various virtual platforms. Transactions in this virtual space often involve terms such as cryptocurrencies, tokens, and NFTs. These enable real-time interaction between buyers and sellers and facilitate the creation of virtual stores, all with legal implications.

¹ <https://www.worldcomplianceassociation.com/3050/articulo-el-metaverso-conceptualizacion-juridica-retos-legales-y-deficiencias-normativas.html>



4. What are the advantages of e-commerce?

One primary advantage is the ability for businesses to expand globally without needing to establish physical stores worldwide. Blockchain technology aims to secure transactions and reduce fraud risks in this virtual environment. However, it is important to recognize that these systems are continually evolving and improving over time.

5. What are NFTs and how do they relate to trademarks?

NFTs, or non-fungible tokens, represent digital or physical assets on the Blockchain network. Each NFT is unique, making them resistant to destruction and counterfeiting, as no two are alike.

In the context of brands, NFTs enable the digital marketing of real-world collectibles and assets, such as cars, designer handbags, and clothing. These items, whether associated with well-established or emerging brands in the physical world, present new opportunities, and challenges in the Metaverse.²

6. Is it advisable to protect a trademark that is used in the Metaverse?

Trademark protection offers consumer security, commercial value, increased market presence, and the ability to defend against the unauthorized use of protected designs, logos, or images. Safeguarding the intellectual property rights of trademark owners in the Metaverse is therefore essential, as is promoting ethical business practices in this virtual environment.

It is equally important to avoid buying or selling products that infringe on real-world trademarks or come from unauthorized or dubious sources. In recent years, there have been controversies involving possible intellectual property rights infringements by well-known companies. These incidents have posed significant legal challenges due to the absence of specialized laws in the Metaverse.

7. How can I protect a trademark used in the Metaverse?

Trademark registration in the Metaverse is a novel practice at a global level and companies such as Coca-Cola, Nike, Prada, Gucci and Ferrari have positioned themselves as forerunners in filing applications to register their trademarks in the virtual world and thus offer their products.

In the case of Mexico, protection must be obtained through a trademark registration application, which must be filed with the Mexican Institute of Industrial Property (IMPI). However, the classification for which the registration will be requested must be carefully considered, since it will seek to protect virtual, digital or tokenized products and services,

² <https://www.santander.com/es/stories/que-son-los-nft>



as well as the commercialization of downloadable digital products, which makes the scope of protection for this type of applications different from that of traditional trademarks.

8. What are the benefits of protecting the trademark I use in the Metaverse?

In addition to the advantages that brands provide in the physical world, such as representing intangible assets, differentiating products and services, implying quality and generating licensing revenue, in the Metaverse brands can gain greater market presence by creating new business models.

Collaboration with video game platforms allows brands to offer virtual goods and expand their presence in this digital environment. This includes the creation of their own universes. Consequently, brand strategies must take advantage of the opportunities of the Metaverse to increase sales and visibility in this growing market.

9. How is the territoriality principle applied in the Metaverse?

Due to the lack of regulation, the Metaverse presents a challenge for trademark protection, leaving companies in an apparent situation of vulnerability. However, we can consider the Joint Recommendation of the World Intellectual Property Organization (WIPO) which addresses trademark protection on the Internet and resembles the Metaverse environment due to its lack of defined territorial boundaries. This recommendation establishes that a trademark will have effect in a country if its use has a commercial impact.

10. Can the use of a trademark be licensed to take effect in the metaverse?

From a freedom of contract perspective, parties can voluntarily agree on the terms of use of trademarks, which become legally binding. For trademark protection in this environment, the implementation of licenses of use is essential. These licenses allow owners to set the conditions for obtaining royalties and provide a defense mechanism against possible unauthorized associations in the Metaverse.

11. What happens if someone affects intellectual property rights in the Metaverse?

The defense of intellectual property rights is crucial in the Metaverse, and different forms of protection are required to adapt to the needs of each brand. In addition to the prior registration of trademarks in this digital environment, it is essential to implement smart contracts and automated systems to enforce the "Take down" process, which seeks to remove sites that infringe industrial property rights.

In terms of infringement, Mexican law addresses issues such as apparent association of trademarks, unfair competition and unauthorized use of trademarks. However, the lack of legal precedents in Mexico generates uncertainty in the resolution of cases,



especially in the Metaverse, where the decentralization of platforms makes it difficult to identify infringers.

We remain at your disposal for any questions or doubts that may arise.

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