

### Digital Fashion and Brand Protection: Leveraging Copyright, Trademark, and Trade Dress; Ownership Challenges

Virtual  
06.21.2022

1:00 p.m.-2:30 p.m. EDT | 10:00 a.m.-11:30 a.m. PDT

This CLE webinar will guide IP counsel on protecting fashion intellectual property in the metaverse. The panel will discuss the various forms of IP that can protect fashion in the digital world of virtual reality and gaming and with respect to non-fungible tokens (NFTs) and the challenges of enforcement. The panel will review past case law decisions and pending cases and developments which will establish new precedent for future protection and enforcement of fashion intellectual property in the metaverse. The panel will also discuss the risks of failing to protect the brands and offer best practices for protecting brands in digital fashion.

#### Description

The first ever Metaverse Fashion Week was held starting Mar. 24, 2022, and featured luxury brands, household names, and digital-native designers. Digital fashion and NFTs have exploded onto the scene and with their expansion have come the traditional issues facing fashion brands seeking to protect their valuable intellectual property. Consumers are customizing clothing that is superimposed on their gaming avatars and brands are expanding consumer awareness by creating and offering virtual designs in games and virtual reality. With the gaming industry expected to be worth over \$200 billion by 2023, fashion brands are taking advantage and featuring and **selling their designs in online games**. Others have used iconic fashion brands to create and sell NFTs leading to high profile litigations which challenge the balance between the First Amendment and a fashion brand's valuable trademark and copyright rights.

Fashion designers, brand owners, and their counsel should take steps to protect their intellectual **property in the metaverse**. There are multiple options for protection, including copyright, trade dress, trademark, and patent.

One of the challenges that arise is the question of ownership of digital creation and under what circumstances is the use of a brand's copyright or trademark considered "appropriation art" and when is purported "artwork" an infringement. While the brand may own a famous trademark or copyrighted work, the **First Amendment may under certain circumstances permit an artist to the use of a trademark** or copyrighted image as appropriation art.

Listen as our authoritative panel of IP attorneys examines the various forms of IP that can protect fashion in the digital/gaming space and the challenges of enforcement given the tensions between appropriation art and nominative fair use and established intellectual property rights. The panel will also discuss the risks of failing to

protect the brands and offer best practices for protecting brands in digital fashion.

## Outline

1. Protecting digital fashion with IP laws
  1. Copyright: What can you protect?
  2. Trademark and trade dress in the metaverse
  3. Domain names in the metaverse
  4. Design patents
2. What does *Andy Warhol Foundation for Visual Arts Inc. v. Goldsmith* portend for copyrights in the metaverse?
3. What can a fashion brand learn from *Hermès Int'l. v. Maison Rothschild* and *Nike v StockX*?
4. Best practices

## Benefits

The panel will review these and other important issues:

- How should counsel leverage IP laws to protect important intellectual property in the digital world?
- What are the hurdles to protecting brands in the digital world and what strategies can be employed to enhance protection?
- What best practices should counsel employ to enforce IP rights in the metaverse?

## FACULTY

- Brian W. Brokate, Partner, Gibney Anthony & Flaherty
- James G. Gatto, Blockchain & Fintech Team Leader, Sheppard Mullin
- Carolyn W. Martin, Senior Counsel, Lutzker & Lutzker
- Theodore C. Max, Partner, Sheppard Mullin Richter & Hampton

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## Attorneys

James G. Gatto

Theodore C. Max

## Practice Areas

Intellectual Property

## Industries

Blockchain

Blockchain and Fintech

Retail, Fashion & Beauty