

# Franchising in the Metaverse

What is the Metaverse, and is it a place where franchising should go?

Brands are moving to the Metaverse. Businesses are buying real estate in the Metaverse, and making sales in the Metaverse. But what is the Metaverse, and is it a place where franchising should go? The Metaverse is (or is likely going to be) a place where our digital and physical lives come together. And new technology like augmented reality, virtual reality, and blockchain/NFTs/cryptocurrency will allow franchising to go to the Metaverse and participate in everything it has to offer. See Cathy Hackl, [Making Money in the Metaverse](#), Forbes.com (March 15, 2021).

Right now, the Metaverse is arguably best understood by only the most technologically savvy. Gamers, for example, are already familiar with the functionality and benefits of using virtual reality platforms for entertainment purposes. For many, however, the concept of doing business in the Metaverse can be difficult to envision. Even brick and mortar businesses, including franchises, that already utilize e-commerce functionalities are likely to have difficulty determining the best way to take advantage of the Metaverse. After all, how does one try on clothes or eat a hamburger in virtual reality? Presently, there are apps for virtually trying on clothes ([Virtual Try-On: The Future of Fashion?](#), 3dlook.me) and Warby Parker has revolutionized the eyeglass retail store with its technology that allows one to remotely try on, select and purchase eyeglasses (Laura Mullan, [Warby Parker uses augmented reality to allow customers to virtually try-on glasses](#), Technology Magazine (May 17, 2020)). There's no known way to physically eat a hamburger in the virtual world, yet.

Every day we read about gaming, retail and fashion brands moving to the Metaverse. But, one thing you have not read about is franchise brands expanding to the Metaverse, or offering franchises to operate in the Metaverse. Sure, you may have read about some NFT product tie-ins or promotions among franchisors taking place in the Metaverse, but nothing in any meaningful way with franchisors offering franchisees the opportunity to actually operate a franchise in the Metaverse. There is little doubt that franchisors and franchisees will eventually join in on the Metaverse opportunity, so let's take a look at what they should be considering before they do.

Franchise brands clearly cannot provide their physical products or services in a virtual world such as the Metaverse. But this seems to call for a franchisor/franchisee revolution to take advantage of the opportunities that may be available in the Metaverse, and it will likely necessitate a new wave of fast-paced innovation to bridge the gap between the Metaverse and the real world. Take for example the recent Barbie-Balmain collaboration where these brands agreed to launch a new fashion line by dressing Barbie dolls in Balmain-designed apparel, and then selling NFTs of those Barbie dolls. Balmain and Barbie used their Metaverse fashion launch to promote Balmain's real world launch of the physical version of the clothing line that the Barbie dolls were showcasing in the digital Metaverse world.

Franchising can similarly bridge the gap between the Metaverse and the real world. Imagine an event taking place in the Metaverse, say it was a music concert, or perhaps even a Metaverse business meeting taking place at company's new Metaverse offices located in Decentraland. Digital avatars in their digital skins will attend such events or meetings, or maybe even virtually walk or drive to the event or the meeting. What if the owner of the digital avatar was hungry and saw a McDonald's on the way to the music concert or business meeting. What if the digital avatar could walk in to the

Metaverse version of McDonald's located in a prime Metaverse real estate location and order a coffee and Big Mac, and then the Metaverse franchisee owner of the virtual McDonald's had its closest real world location, a drone, or even a ghost kitchen fulfill these Metaverse orders with real food in the real world. In fact, as of this writing, McDonald's revealed that it has filed patent applications in the U.S. Patent and Trademark Office to cover the provision of new Metaverse services like "a virtual restaurant ... and virtual goods," as well as "operating a virtual restaurant featuring home delivery." See Gary Symons, [McDonalds Files Patents for Its Launch Into the McMetaverse](#), The Licensing Letter (Feb. 15, 2022).

The scenario above is likely just one example of how franchisors and franchisees may be able to operate in the Metaverse. But if they expand to the Metaverse, franchisors should also make sure to protect their brands in this new virtual world. It is not entirely clear, yet, whether trademark rights apply to business in the Metaverse. Trademark attorneys are seeing a surge in trademark applications from all kinds of brands, in all different industries, for digital versions of their products and services in the Metaverse. This is happening on a global scale, and it is somewhat important to act quickly outside the United States because most other countries are first to file countries where priority is based on being the first to file a trademark application in that country in order to own trademark rights (in the United States, trademark rights are generally determined by first use in commerce, not the first to seek registration).

Trademark protection for the Metaverse, however, is really just one consideration for franchisors planning to do business in the Metaverse. Other challenges to virtual franchising in the Metaverse, at least in the United States, will exist in the form of amendments to existing franchise documents, namely, Franchise Disclosure Documents, franchise agreement, development agreement and other related franchise documents to reflect

the necessary rights for a franchisee to operate in the Metaverse. Many franchisors may decide to develop completely new franchise offerings to accommodate for virtual franchise operations in the Metaverse, including a very different operations manuals and policies to address other significant business problems, including employment issues related to a Metaverse operation and Metaverse compliance obligations, e.g., privacy, security, anti-money laundering, etc. What a franchisor and a franchisee will need to invest, and the currency required for payment, will likely also be very different, as the Metaverse is likely to be based in cryptocurrency exclusively, not the dollar.

Zepeto. Roblox. Minecraft. Animal Crossing. Fortnite. Decentraland. Sandbox. Illuvium. Omniverse. All of these names are associated with new lands or virtual worlds in the new Metaverse. All are working towards using or allowing the use of cryptocurrency in their lands, and all are seeing businesses “move” to their lands in droves. For example, Prager Metis International LLC, an accounting and financial services company, recently purchased three stories of digital space in Decentraland for its new Metaverse offices. Like the real world, site selection for the Metaverse franchise location will likely be a key component to any franchise offering, and there may be a rush to find “good” locations in the Metaverse, not to mention the cost associated with purchasing or leasing such locations.

Enforcement of trademark rights, and other franchise rights, will also evolve in the Metaverse. Many large brands are already finding infringements of their marks on popular NFT marketplaces like OpenSea (see Tim Lince, [OpenSea: how trademark infringement is rampant on the biggest NFT marketplace](#), worldtrademarkreview.com (Jan. 20, 2022)), and infringement in Web3.0 and on the Metaverse will only increase as these technologies become mainstream. One prominent brand, Hermès, has already filed trademark litigation against the maker of so-called “MetaBirkins,” virtual

bags that allegedly infringe Hermès' rights in the design and name of its popular Birkin bags (*Hermès International v. Mason Rothschild*, 1:22-cv-00384 (S.D.N.Y.)).

In other cases, however, the creator of infringing or counterfeit virtual goods will likely be identifiable only by a user name, and/or may be located in a foreign jurisdiction, making litigation—and any meaningful monetary recovery—very difficult. While the larger and more legitimate virtual platforms will likely have some form of notice-and-takedown policy for counterfeit goods or other infringements, franchisors will likely find themselves playing the same old whack-a-mole that is already so painfully common in online e-commerce enforcement.

The Metaverse will also likely create new avenues for infringement and counterfeiting. Insofar as infringers are selling virtual goods, and getting paid in cryptocurrency, these transactions will be instantaneous with no shipping or payment processing required. Counterfeit virtual goods will never need to pass Customs, and there will be no bank or PayPal accounts to freeze.

Also problematic is the likely rise of decentralized domain names and websites. See Adelene, [Own Your Website—Where Only You Have Control Over It.](#), medium.com (July 30, 2021). These “censorship-resistant” names and sites are hosted on peer-to-peer computer networks meaning there is no specific server or registrar with the ability to alter or disable the site. Presumably such names and sites will be used for any number of illicit purposes, not the least of which will be displaying and selling counterfeit goods (virtual or otherwise). Thus, while it may be possible to “take down” infringing goods or advertising within a specific virtual platform, the infringer will remain able to sell counterfeits through a decentralized website, and can simply create new advertising elsewhere in the

mainstream Metaverse.

This will be a brave new franchise world. Given the relative ease with which computer-savvy infringers can set up entire counterfeit virtual stores in the Metaverse—hiding behind pseudonymous user names, making sales through decentralized websites, and getting paid in potentially untraceable cryptocurrency—franchise brand owners may need to be more vigilant and proactive against infringement in the Metaverse than they are in the real world.

Ultimately, it seems clear that franchising in the Metaverse is coming our way, perhaps sooner than we expect. There is no question that a lot of thought, planning, ingenuity and investment will be required to make it happen in a way that not only maintains the franchise brand's firm connection to the real and virtual consumer, but also provides the same or similar brand experience to meet consumer expectations, all while still taking steps to avoid virtual infringement or counterfeiting of the brand.

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