

NEXT GEN INVESTING

These millennial creators are making 6 figures selling NFTs: 'It changed the trajectory of my career and my life'

Published Wed, May 12 2021-1:58 PM EDT • Updated Thu, May 13 2021-12:02 PM EDT

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NEXT GEN INVESTING

'I had \$10 in my bank account': This 36-year-old went from living paycheck to paycheck to making over \$109,000 selling NFTs

Published Wed, Feb 2 2022-11:00 AM EST • Updated Wed, Feb 2 2022-3:39 PM EST

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NEWS



Meet 12-year-old Benjamin Ahmed who made \$1 million creating NFTs

By Rikki Schlott

February 3, 2022 | 10:46am | Updated



BUSINESS
Teen Artists Are Making Millions on NFTs. How Are They Doing It?



NFT // News

'I have been hacked': collector loses more than \$2m of NFTs overnight







NFT... WTF? What You Need to Know About Non-Fungible Tokens

The popularity of NFTs is skyrocketing. The craze, which has taken the art and

VENTURE TECH HUMOUR & WEIRD

Seriously though, WTF is an NFT and why do I care?

Guest Author | Jan 28 2022, 3:17 pm



The Drum. Marketing can change the world.

Modern Marketing Agency Business Creativity Media Work & Wellbeing Digital Trans

OPINION

WTF are NFTs? And why are they currently so important?

THE BALANCE ▶ INVESTING

Part of **WOMEN & MONEY** ▾

Blockchain, NFT, WTF?

Why You Should Pay Attention to Blockchain and NFTs

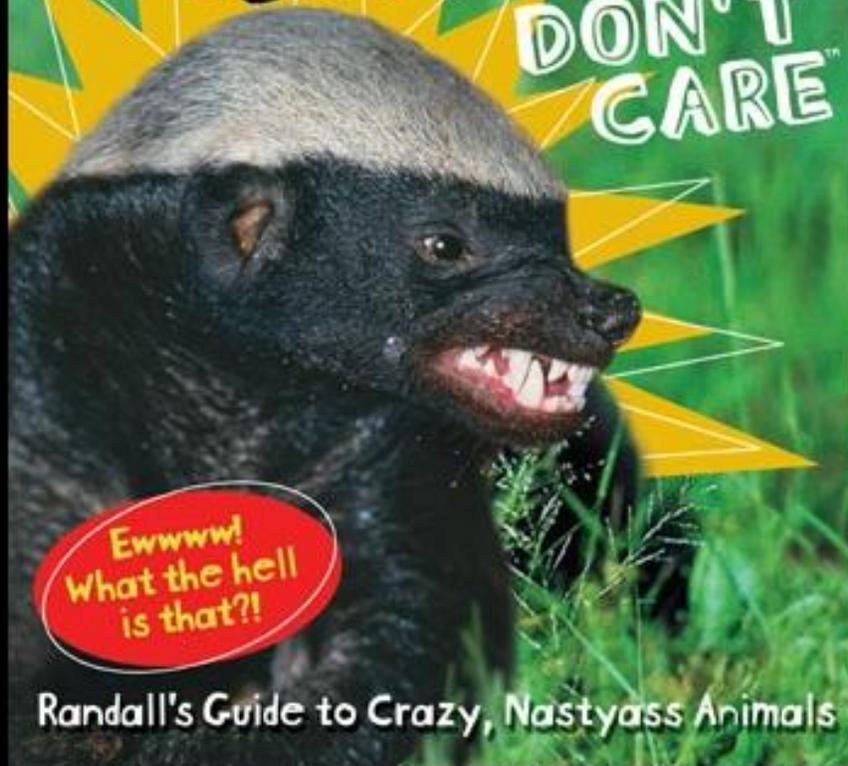
BY [MRINALINI KRISHNA](#) | Updated November 13, 2021

REVIEWED BY [THOMAS J. CATALANO](#)



HONEY BADGER

DON'T
CARE™



Ewww!
What the hell
is that?!

Randall's Guide to Crazy, Nastyass Animals

Trademark Infringement Checklist

- **Does this plaintiff have standing?**
- **How did it acquire trademark rights?**
- **What is its priority date?**
- **Is the trademark distinctive?**
- **Is the subject matter protectable?**
- **What is this defendant's relation to the act?**
- **How did defendant make trademark use?**
- **Was the use in US commerce?**
- **How does the use cause a likelihood of confusion?**
- **Confusion as to what?**
- **How does the confusion proximately harm plaintiff?**
- **What remedies are sought?**

The Promise of Blockchain



Today's Agenda

- Facts in *Hermes v Rothschild*
- Discussion of the Rogers test (Artistic relevance)
- Application of the Artistic Relevance test to NFTs



Takeaways

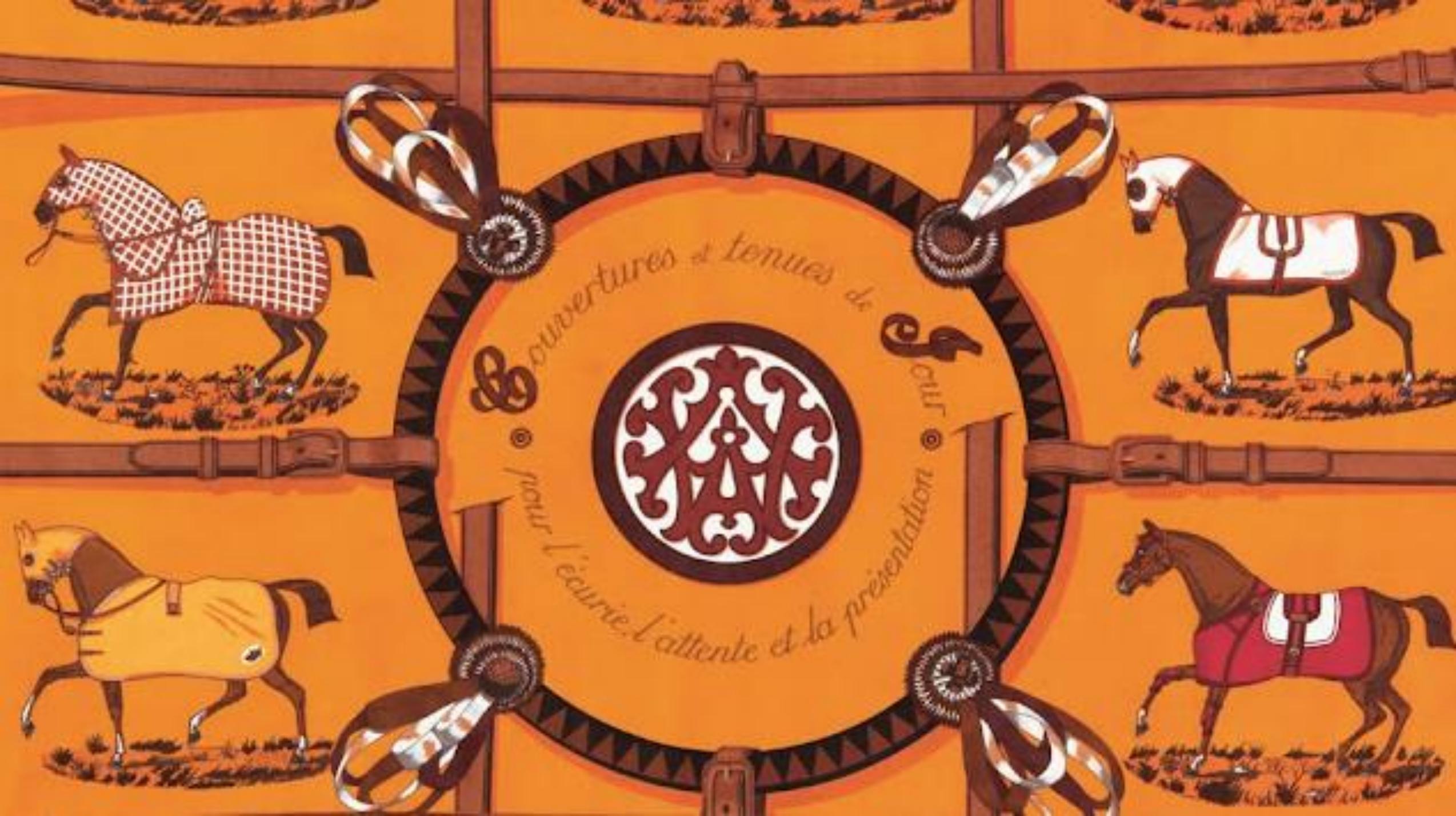
- Lots of reference stuff on NFTs
- Advise clients on selling NFTs without violating third-party rights
- Advise clients on protecting their brands



**FACTS IN HERMES v
ROTHSCHILD**



Our story begins in
1837 in Paris



ouvertures & tenues de
cuir pour l'écurie, l'attente et la présentation

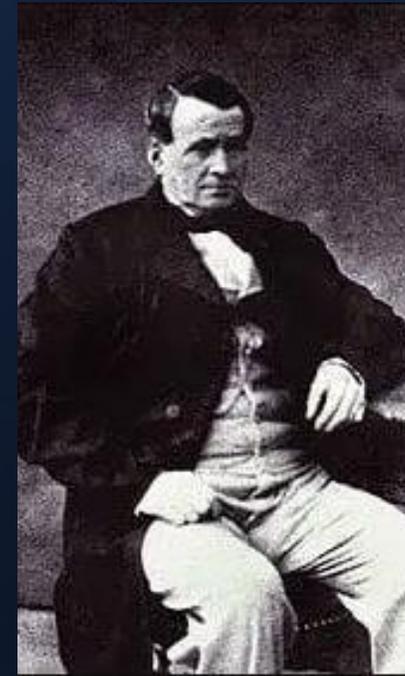




HERMÈS

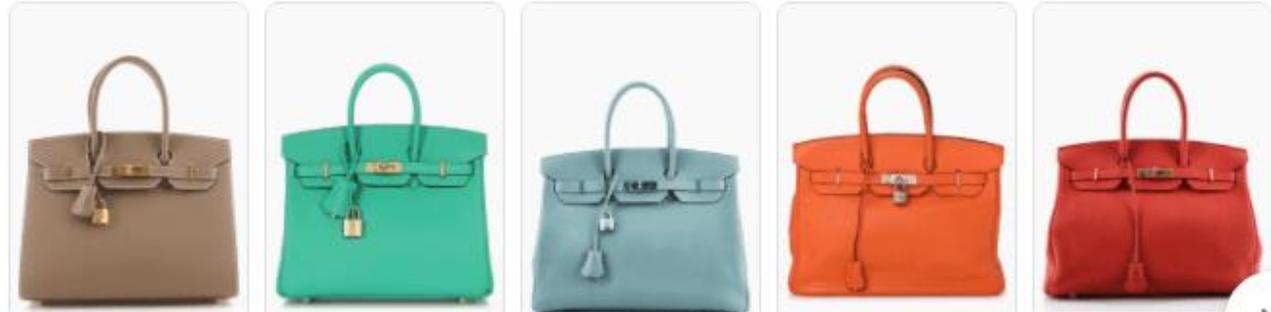
PARIS

1981 or so: Jane Birkin carries a wicker basket onto a plane



Birkin Bags

Ads · Shop birkin bags



Free 3-day

Item	Price	Condition	Source
Hermes Birkin Sellier Bag...	\$40,965.00	Rebag	Special offer
Hermès Menthe Swift...	\$25,800.00	Used	Sotheby's
Hermes Birkin Handbag Ciel...	\$12,395.00	Rebag	Special offer
HERMES Swift Birkin 35...	\$9,710.00	Used	Fashionphile
Hermes Birkin Handbag...	\$13,640.00	Rebag	Special offer

Free 3-day

Free 3-day

Free 3-day

Free 3-day

Free 3-day

»

<https://www.hermes.com> > story > 106191-birkin

The Birkin | Hermès USA

This is the miracle of the **Birkin** Cargo. Multi-pocketed and multi-practical, this soft and lightweight **bag** is inspired by military clothing. The ingenious ...

You've visited this page 4 times. Last visit: 2/9/22





**It's not a bag.
It's a Birkin.**



Birkin Bag reg'd trade dress

- “The mark consists of the configuration of a handbag, having rectangular sides a rectangular bottom, and a dimpled triangular profile. The top of the bag consists of a rectangular flap having three protruding lobes, between which are two keyhole-shaped openings that surround the base of the handles. Over the flap is a horizontal rectangular strap having an opening to receive a padlock eye. A lock in the shape of a padlock forms the clasp for the bag at the center of the strap. The broken lines in the drawing represent the location of the handles and are not part of the mark.”

Mason Rothschild

Instagram

Search

Home, Search, Post, Activity, Heart, Profile icons



masonrothschild  [Follow](#)  

71 posts 14.5k followers 599 following

Mason Rothschild
Digital creator
[@ilikeyouyoureweird](#) [@metabirkins](#) [@worm__hole](#) [@terminal27](#)
[masonrothschild.com](#)

United States Italy France Hawaii Joshua Tree

POSTS VIDEOS TAGGED

Dear Community,

So, Hermes filed a trademark lawsuit against me on Friday—although they didn't send me or my lawyers a copy. My lawyers and I have reviewed Hermes' complaint. Hermes' claims are groundless and we look forward to defeating those claims in court and helping to set a precedent.

I am not creating or selling fake Birkin bags. I've made art works that depict imaginary, fur-covered Birkin bags.

My lawyers at Lex Lumina PLLC put it well when they said that the First Amendment gives me the right to make and sell art that depicts Birkin bags, just as it gave Andy Warhol the right to make and sell art depicting Campbell's soup cans.

I have the right also to use the term "MetaBirkins" to describe truthfully what that art depicts, and to comment artistically on those bags and on the Birkin brand.

The fact that I sell the art using NFTs doesn't change the fact that it's art. It's quite clear from reading Hermes' complaint that they don't understand what an NFT is, or what NFTs do.

We have tried to be reasonable. Hermes first sent me a letter threatening a lawsuit if I didn't knuckle under and stop doing MetaBirkins altogether. We wrote to them and explained that we were doing nothing we didn't have a right to do.







NOT
YOUR
MOTHER'S
BIRKIN

MetaBirkins

MetaBirkins Twitter

← **MetaBirkins**
96 Tweets



⋮ ✉ 🔔 Following

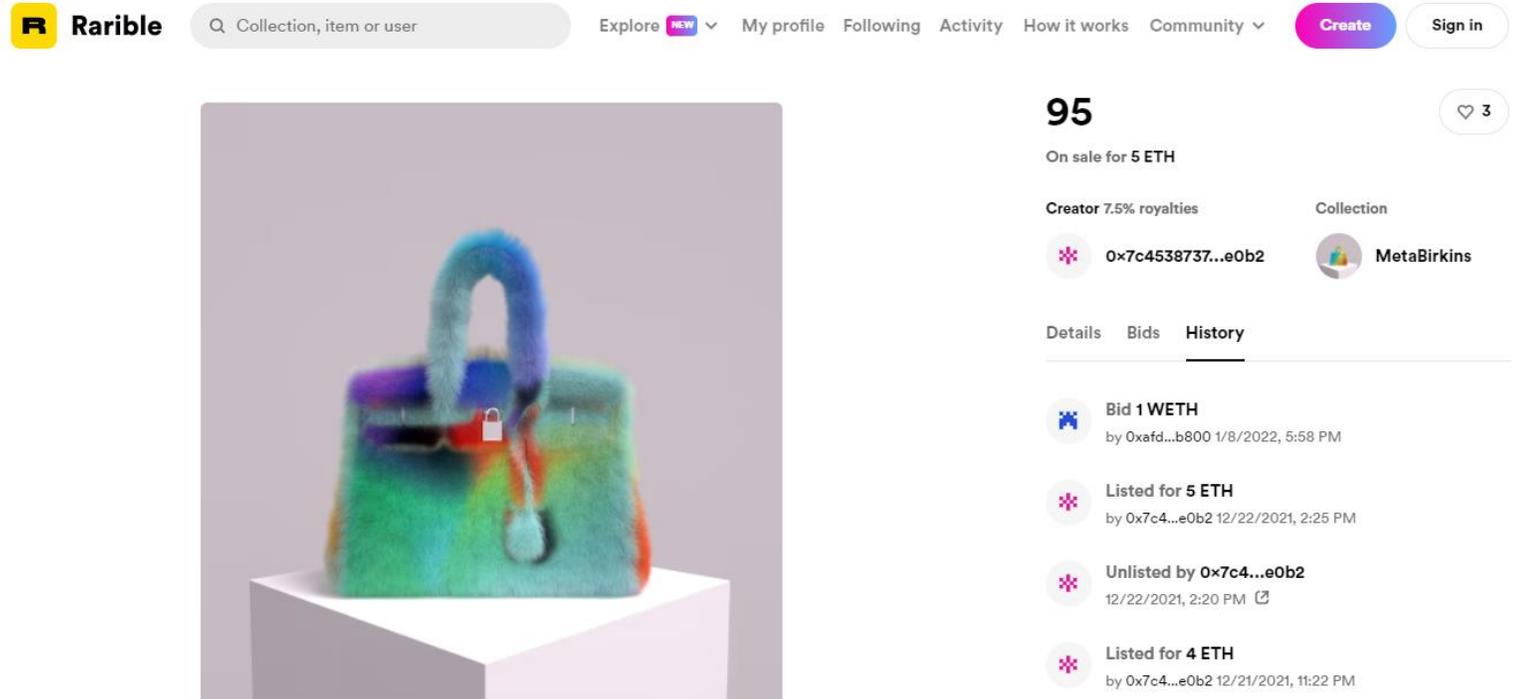
MetaBirkins
@MetaBirkins

A digital art project by [@masonrothschild](#) living on the Ethereum blockchain. Feat. [@voguebusiness](#) [@Forbes](#), [@BoF](#), [@ELLEmagazine](#), [@HYPEBEAST](#), [@highsnobiety](#).

[looksrare.org/collections/Ox...](#) 📅 Joined November 2021

2 Following 7,056 Followers

MetaBirkins Rarible Listing



The screenshot shows the Rarible interface for a digital artwork listing. At the top, the Rarible logo is on the left, followed by a search bar containing the text "Collection, item or user". Navigation links include "Explore" (with a "NEW" badge), "My profile", "Following", "Activity", "How it works", and "Community". On the right side of the header, there are buttons for "Create" and "Sign in".

The main content area features a large image of a colorful, fuzzy handbag (a MetaBirkin) displayed on a white pedestal. To the right of the image, the listing details are shown:

- The price is **95** ETH, with a note "On sale for 5 ETH".
- The creator is **0x7c4538737...e0b2**, with a note "Creator 7.5% royalties".
- The collection is **MetaBirkins**.
- There are **3** likes.

Below the listing details, there are tabs for "Details", "Bids", and "History". The "History" tab is active, showing a list of transactions:

- Bid 1 WETH** by 0xafd...b800 on 1/8/2022, 5:58 PM.
- Listed for 5 ETH** by 0x7c4...e0b2 on 12/22/2021, 2:25 PM.
- Unlisted by 0x7c4...e0b2** on 12/22/2021, 2:20 PM.
- Listed for 4 ETH** by 0x7c4...e0b2 on 12/21/2021, 11:22 PM.

MetaBirkins LookRare Listing

LOOKSRARE Explore Collections Rewards Search

MetaBirkins

Creator: 0x...48D0

100 Items, 86 Owners, 5.5 Floor Price, 1.5 Total Vol*

Connect Wallet

Price Ascending

Item	For Sale	Price
	41	5.5
	31	7.5
	1	10.0
	17	10.0
	19	15.0
	13	20.0



metabirkins

Follow



41 posts

20.2k followers

1 following

MetaBirkins

Digital creator

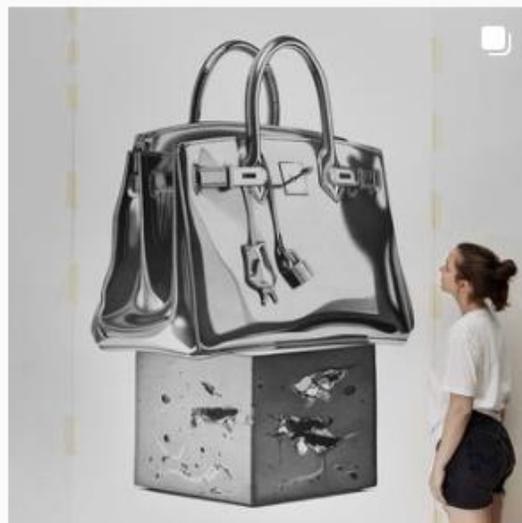
A digital art project by @masonrothschild living on the Ethereum blockchain. Feat. @voguebusiness, @forbes, @bof, @elleusa, @hypebeast, @highsnobiety. looksrare.org/collections/0x566b73997f96c1076f7cF9e2C4576Bd08b1A3750

MetaBirkins IG Listing

POSTS

VIDEOS

TAGGED

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I hope Hermes understands that I won't be intimidated.



Hermes v Rothschild Complaint

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HERMÈS INTERNATIONAL and
HERMÈS OF PARIS, INC.,

Plaintiffs,

-against-

MASON ROTHSCHILD,

Defendant.

CIVIL ACTION NO.

22 CV _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Hermès International and Hermès of Paris, Inc. (“Hermès”), through its attorneys Baker & Hostetler LLP, for its Complaint against Defendant Mason Rothschild (“Defendant”) alleges and states as follows:

NATURE OF THE CASE

1. As Defendant stated in a recent interview with Yahoo Finance: “There’s nothing more iconic than the Hermès Birkin bag.” Defendant is a digital speculator who is seeking to get rich quick by appropriating the brand METABIRKINS for use in creating, marketing, selling, and facilitating the exchange of digital assets known as non-fungible tokens (“NFTs”). Defendant’s

Rothschild Open Letter to Hermes

Dear Hermès,

So, I got your cease & desist letter. While I am sorry if you were insulted by my art, as an artist, I will not apologize for creating it.

Now, as you are aware, the First Amendment gives me every right to create art based on my interpretations of the world around me. There are countless examples of artists who reference the world and the products and cultural artifacts in it. With that understanding, MetaBirkins is a playful abstraction of an existing fashion-culture landmark. I re-interpreted the form, materiality and name of a known cultural touchpoint. MetaBirkins are also a commentary on fashion's history of animal cruelty, and its current embrace of fur-free initiatives and alternative textiles. My aim is always to create additive art projects that contribute positively to the culture.

When it comes to art, selling my MetaBirkins as NFTs is akin to selling them as physical art prints. It should not be my job to educate you on advancements in the world and the culture of art. Art is art.

There is a moving tide of innovation and evolution, and it is your role as a fashion powerhouse to amplify young creatives and artists rather than stomp them out. Your actions can help determine the future of art in the Metaverse.

You can be a part of an incredible movement.

Rothschild Letter to Community

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Topics for Discussion

- Intro to NFTs
- Intro to possibility relevant theories
 - Artistic relevance
 - Initial Interest Confusion
 - Dastar – confusion as to attribution/source

Satoshi
Nakamoto
white paper
Oct 31, 2008



IMAGE NOT FOUND

From Satoshi's white paper:

- We propose a solution to the double-spending problem using a peer-to-peer network. The network timestamps transactions by hashing them into an ongoing chain of hash-based proof-of-work, forming a record that cannot be changed without redoing the proof-of-work. The longest chain not only serves as proof of the sequence of events witnessed, but proof that it came from the largest pool of CPU power.

“To understand the power of blockchain systems, and the things they can do, it is important to distinguish between three things that are commonly muddled up, namely the bitcoin currency, the specific blockchain that underpins it and the idea of blockchains in general.”

The Trust Machine, THE ECONOMIST, Oct. 31, 2015

Invention of the NFT

Intro to NFTs: Prior Art by Anil Dash

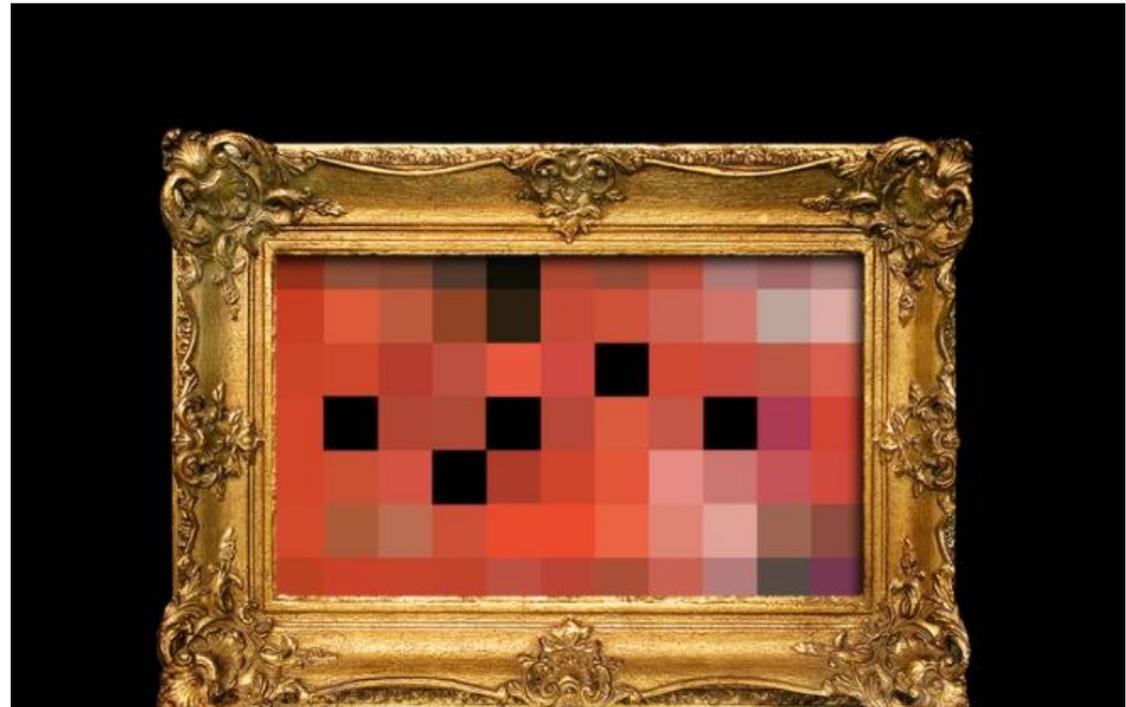
t

The Atlantic

NFTs Weren't Supposed to End Like This

When we invented non-fungible tokens, we were trying to protect artists. But tech-world opportunism has struck again.

By Anil Dash



What is a NFT?

A NFT is a one-of-a-kind digital file

- Heraclitus, c. 535-475 BC

A NFT is not the digital file but the file on the blockchain that stores information about the digital file

Intro to NFTs: Definitions

- Essential the same, or similar technology used for cryptocurrencies like [bitcoin](#) and ether is used to guarantee the uniqueness of each NFT and to prove who owns it.
- They're like any other collector's item, like a painting or a vintage action figure, but instead of buying a physical item, you're instead paying for a file and proof that you own the original copy.

What Are NTFs: Check My NTF

Check My NFT

Do you know how your NFT's assets are stored? 🔍 🖼️

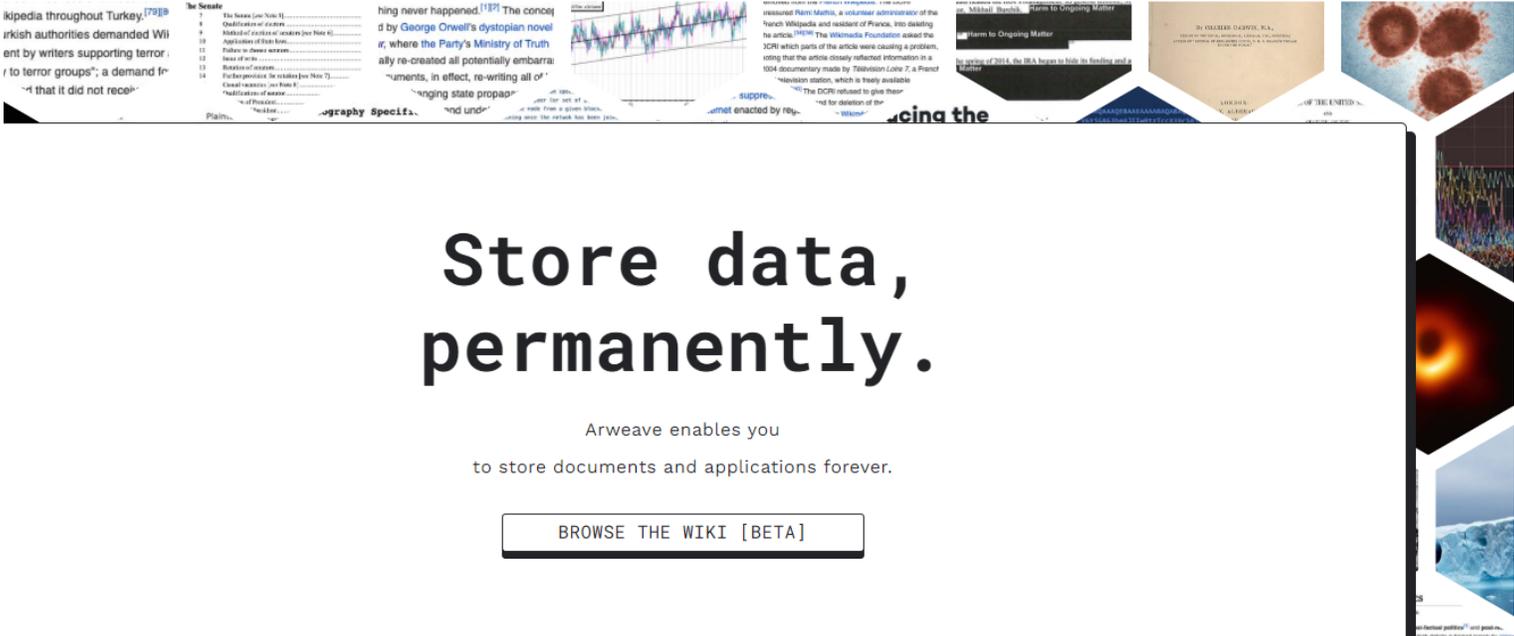
Don't let your NFT become a {placeholder} 😞

Enter your NFT contract address & token ID to see the strength of your NFT's assets.

Permanent Storage Services for NFTs

 arweave.org

[CLAIM A TOKEN](#)



**Store data,
permanently.**

Arweave enables you
to store documents and applications forever.

[BROWSE THE WIKI \[BETA\]](#)

Introduction to legal issues relating to NFTs

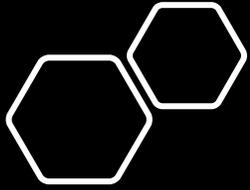


Our firm represents clients in some of the world’s most significant disputes relating to blockchain, cryptocurrency, film, music, and artworks, and has been closely monitoring the exponential growth in the non-fungible token (NFT) art and collectibles market. This article discusses potential legal issues in the space.

What are NFTs?

NFT Lawsuits/Disputes

- Lil Yachty
- Birkins
- Nike StockX
- Hitpiece



Intro to NFTs – How Do They Work



Jonty Wareing @jonty · Mar 17, 2021



Out of curiosity I dug into how NFT's actually reference the media you're "buying" and my eyebrows are now orbiting the moon



Jonty Wareing
@jonty

Short version:

The NFT token you bought either points to a URL on the internet, or an IPFS hash. In most circumstances it references an IPFS gateway on the internet run by the startup you bought the NFT from.

Oh, and that URL is not the media. That URL is a JSON metadata file

8:37 AM · Mar 17, 2021



NFT ECOSYSTEM

Breaking news /wealth /regulation /crime /crypto /sustainable /startups /dev

Company news
The long read

all stories

The Top 7 NFT Marketplaces to Explore for Artists in 2022

28 January 2022

For Finextra's free daily newsletter, breaking news and flashes and weekly job board.

3 0 0

The 15 Best NFT Marketplaces for Artists

The meteoric rise of NFTs has led to a surplus of platforms for artists to sell their digital wares. But which NFT marketplace is right for you? Here's a comprehensive look at the top platforms.

GIL HILDEBRAND
29 JUN 2021 - 11 MIN READ

PRESTIGE

STIGE 40 UNDER 40 300 HIGH FLYERS PEOPLE & EVENTS STYLE TRAVEL PURSUITS WIN

Home > Pursuits > Technology > The 8 Most Popular NFT Marketplaces in ...

The 8 Most Popular NFT Marketplaces in the World

BY TRINETRA PAUL | 03 FEB 2022

TYPES OF NFT MARKETPLACES

- Proprietary or closed – NBA TopShot
- Curated – Nifty Gateway
- Open - OpenSea

Available
now on
OpenSea



+ Add to watchlist

Dead Trademark Agglomeration

148

items

206

owners

◆ 0.003

floor price

◆ 0.18

volume traded

The Dead Trademark Agglomeration is the first and only NFT collection dedicated to collecting and preserving unique dead trademarks. Each NFT is based on actual historical U.S. trademark records from a past trademark registration. All information comes directly from official sources and government records. Each NFT provides a chance to stake a claim to a unique part of

Statistics



Items



Activity

- **NFT LAWSUITS**

Lil Yachty

Lil Yachty sues music NFT start-up Opulous for trademark infringement

By Chris Cooke | Published on Monday 31 January 2022



The rapper Lil Yachty has sued Opulous – the music NFTs start-up launched by the founders of Ditto Music – accusing it of using his name and brand as part of launch communications, even though he had not agreed to get involved in the venture.

OK then

- Let's evaluate the Hermes fact pattern (As alleged in the complaint)

Trademark Infringement Checklist

- **Does this plaintiff have standing?**
- **How did it acquire trademark rights?**
- **What is its priority date?**
- **Is the trademark distinctive?**
- **Is the subject matter protectable?**
- **What is this defendant's relation to the act?**
- **How did defendant make trademark use?**
- **Was the use in US commerce?**
- **How does the use cause a likelihood of confusion?**
- **Confusion as to what?**
- **How does the confusion proximately harm plaintiff?**
- **What remedies are sought?**

The Asymmetry of Trademark Use Evaluation

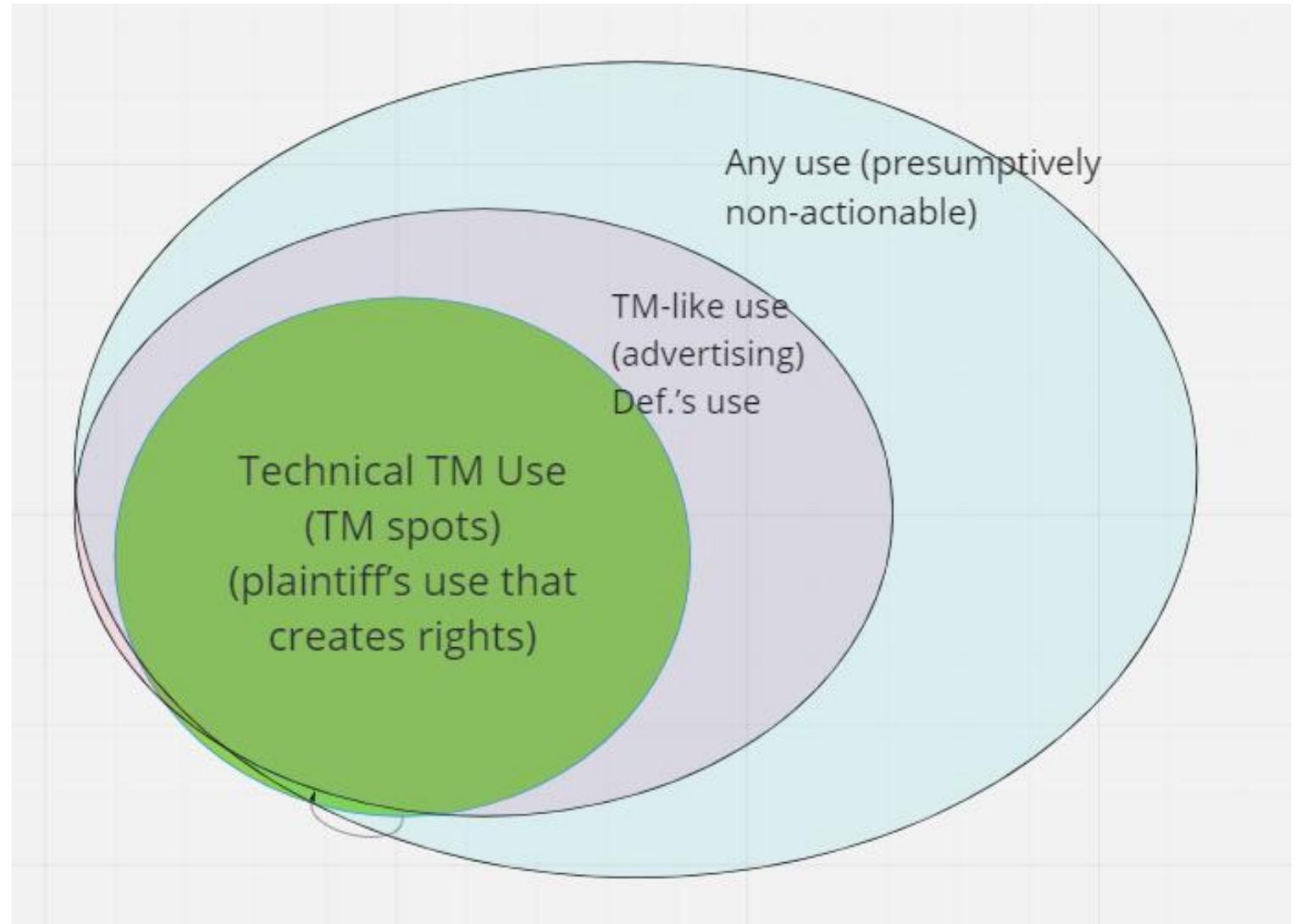
Plaintiff

- Technical trademark use of the kind that would create a specimen accepted by the PTO
- E.g.
- Hang tags, labels, packaging
- Advertising describing services
- “upper left/shopping cart”

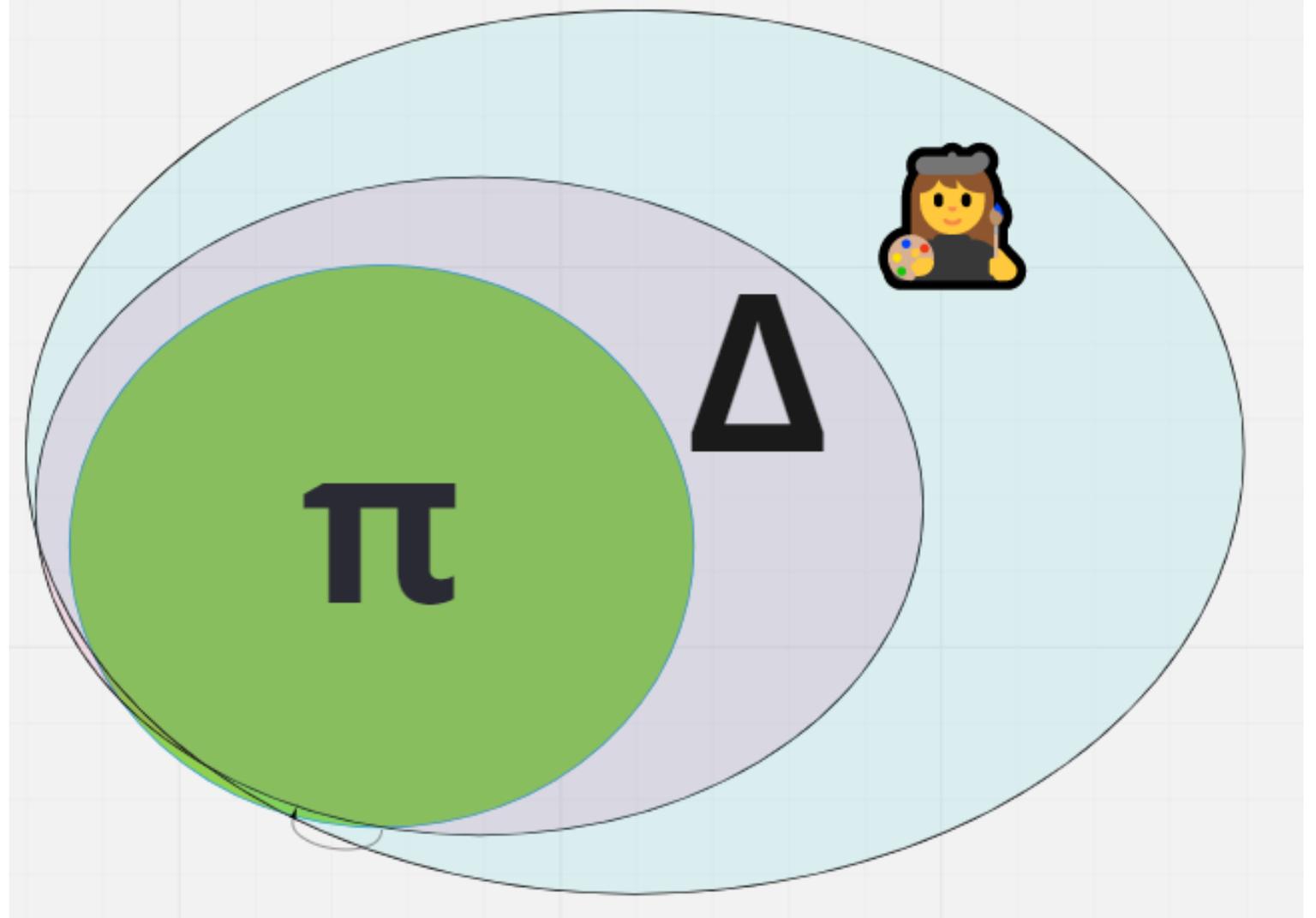
Defendant

- Anything that constitutes technical use
- Penumbra (advertising, social media, “ancillary”)

The Assymetry of Actionable Use

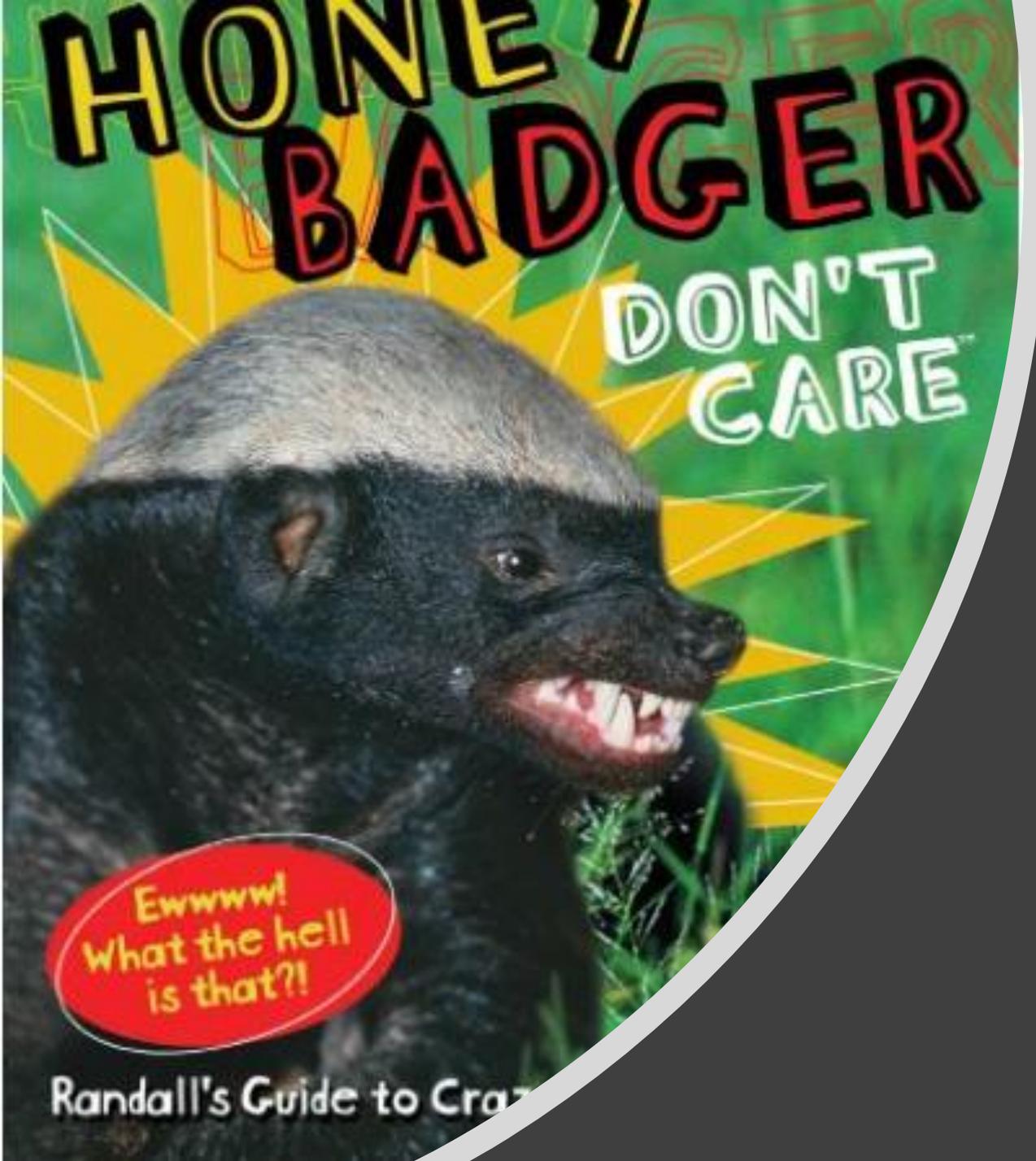


The closer to
plaintiff-like
use, the
more
problematic





Rogers v Grimaldi
(Ginger and Fred)



*Grimaldi – Gordon
v Drape Creative –
Ninth Circuit 2018*

Expressive Works

From Arrakis to the watch party – Shop award-worthy **fan art** for the red carpet, including exclusive Dune merch.



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Accessories

Accessories to help you accessorize like an accessorizing pro. Shop bags, hats, pouches, scarves, water bottles, pins, masks, mouse pads, and more.

[Shop Accessories](#) ▾



Bad Spaniels
– VIP v Jack
Daniels –
Ninth Circuit



What Do You Think?

- Expressive work?
- Artistically Relevant?
- Explicitly Misleading?

Marcel Duchamp

Fountain

1917, replica 1964



Do NFTs
Recontextualize
Everything?

Other Possible Theories In Evaluating These Cases

- Initial Interest Confusion
- Dastar

IIC – *Mobil Oil* – Second Circuit 1987



IIC – *Netscape v Playboy* – Ninth Circuit 2004



POTENTIAL USES FOR NFTS

This Tampa Bay home is being sold as an NFT

A Gulfport house will sell at auction next week to transfer the property rights “instantaneously” over the blockchain in a first for the region and maybe the nation.



The Promise of Blockchain

