

# Unauthorized Use of Famous Brands In Virtual Products of The Metaverse World In The Perspective of Brand Law And Technology Law In Indonesia

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## ABSTRACT

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The Metaverse is a new form of virtual interactive and physically cyber interaction where users can experience activities in a virtual environment that feels very real. For companies that utilize the Metaverse well, such as promoting or commercializing virtual products within it, it can bring significant profits. However, commercialization through cross-border technology often faces legal issues that arise. The use of brand elements on a product marketed by others without permission is a major issue in the field of brands, which also occurs in the digital world. This study aims to prove legal action against the use of famous brands in the Metaverse, as well as the legal actions that can be taken by owners of famous brands against the use of their brands in virtual Metaverse products. This study was conducted through a normative juridical approach using literature or secondary data as the main source. Based on the research conducted, it was found that the use of famous brand elements in the Metaverse is considered a violation of the brand, similar to brand violations in the real world in general. Therefore, based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law) harmonized with the ITE Law, the rights of brand owners to take legal action to protect their brands will still apply even if the brand violations occur in the digital space.

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## 1. Introduction

Intellectual property law (IPR) is an intangible right that comes from an idea which is then made into a product that makes the product have a selling or commercial value. The World Intellectual Property Organization (WIPO) defines intellectual property as creations resulting from human thought that include inventions, literary and artistic works, symbols, names, imagery and designs used in commerce. [1]

In practice, there are three pillars related to intellectual property, namely commercialization, protection and law enforcement. Everyone has the right to the protection of the moral and material interests resulting from any intellectual work of which he is the creator. [2] Intellectual property is a creation born of human intellectual ability, therefore the protection of moral and material interests produced by a creator of any intellectual work he creates is a legal right that must be fulfilled. This right arises from the results of intellectual work that is expressed in a tangible form, not just ideas / ideas but there is a physical form. This right must also be respected and protected absolutely, because it is part of human rights as contained in Article 27 (2) of the Universal Declaration of Human Rights (UDHR) "... Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." Like other forms of wealth, IPR is also personal wealth that can be owned and treated equally. [3]

Meanwhile, in the implementation of human rights in Indonesia, IPR can be considered as property rights that cannot be used arbitrarily. However, in practice, an intellectual property may carry risks that allow others to claim or acknowledge the intellectual work. [4] Thus, there is a need for legal protection against risks arising from existing intellectual works. This is in line with the theory developed by Sherwood and known as Risk Theory. Therefore, in order to protect the rights arising from an intellectual property creation, the state should realize binding legal certainty by providing constitutional guarantees for these rights.

The rapid advancement of technology and the development of commodities in trade make the scope of trade wide and cross various countries. Now national borders are no longer a barrier in trading and transacting. IPR is one of the fields that is also growing rapidly following technological developments that occur. Digital transformation that is growing rapidly has significantly brought changes to the form of interaction in the digital world in various fields. One form of interaction in the digital world that is now developing is the presence of a new form of interaction in the form of virtual interactive physically cyber known as the metaverse (Amirulloh, 2017). Metaverse is a real-life visualization in the digital space, where users can experience activities in a virtual environment that is so real. The use of the metaverse also supports intellectual property to develop and adapt to digital developments. Assets that initially could only be enjoyed in the digital world, in the metaverse can now be transferred into assets in the real world. Therefore, the use of this metaverse can have a major impact on competitive business competition.

Brand is one of the intellectual parts that is closely related to trade activities, therefore the brand has a fairly high economic value. As an intellectual field that is closely related to trade activities, brands are one of the fields that have also developed in the use of digital developments. Generally, the brand acts as a company asset in business activities. Likewise in the use of the metaverse. For companies that make good use of the metaverse, such as promoting or commercializing virtual products in it, it will certainly bring large profits. But it turns out that in practice, cross-border trade through technology often finds obstacles in it. The use of brand elements in a product marketed

by other parties without permission is a major problem in the brand field. This generally happens to brands that have a high reputation or well-known brands. Reputation is the beginning of consumer trust in the products / services offered. A brand with a good quality identity will certainly make the brand have a good reputation in the eyes of consumers. [5] Therefore, in its use, a brand has a close relationship with reputation. A well-known brand is a qualification brand with a high reputation, where this brand can be known by the general public just by visualization or even its name. But the higher the reputation of a brand, the greater the risk that will be caused. One of these risks is the use or imitation of a brand's products by parties who do not have rights. Not only in the real world, but these actions also occur in the digital world.

The presence of the metaverse can cause major changes in new systems, including in terms of business. In the Roblox game platform, through the existing service users can now shop for various items to dress up their avatars. For the sake of economic benefits, various well-known brands such as Gucci and Nike have taken advantage of this business model. However, in practice it is not uncommon for a product to be marketed by other parties who do not have rights to the product. This also happens in the digital world, as happened to French luxury goods manufacturer Hermès against MetaBirkin over the use of the famous Birkin name and bag design. The sale was made by an American digital artist, Mason Rothschild, who did not have a license or license for Hermès' Birkin Bag product. The Rothschilds made substantial economic gains from the sale of bag designs resembling Hermès' famous Birkin Bag, by changing its name to MetaBirkins.

The unauthorized use of famous trademarks on virtual products in the metaverse is a major issue in the field of trademarks. This can lead to a weakening of the brand's distinctiveness and confusion among consumers. In Indonesia, the government has provided protection for trademarks as legal certainty for trademark owners through Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law). The Trademark Law clearly regulates the use of trademarks, prohibitions, and sanctions for trademark violations (T. S. Ramli et al., 2020). However, the metaverse is a relatively new phenomenon and there is currently no specific regulation governing it. The incident involving Hermès opens up new perspectives on trademark protection in the digital world (Balqis, 2021). Legal issues today are not only happening in the physical world, but also in virtual products in digital space. However, the law must move forward and adapt to the current digital developments to create better development in the digital era. As a preventive measure in the face of massive digital developments, activities in cyberspace and the use of technology in Indonesia are accommodated and harmonized in Law Number 11 of 2008 concerning Electronic Information and Transactions and its amendment, Law Number 19 of 2016 (ITE Law).

## **2. Materials and Methods**

This research uses a normative juridical approach method by utilizing library law or doctrinal legal research through secondary data sources such as legislation, legal theory, as well as the thoughts and opinions of experts. This legal research was obtained

through direct collection of theoretical data by formulating a comparison of *das sein* and *das sollen* from the practice of using elements of famous trademarks without permission in virtual products by irresponsible parties in the metaverse space based on laws and regulations that regulate trademarks and technology in Indonesia (Sugiyono, 2017). This research is descriptive analytical, which means providing a detailed and detailed description of the obtained data to be analyzed in order to produce an illustration of the existing problem.

#### **4. Results and Discussions**

##### **A. Legal Action against the Use of Famous Brands on Virtual Products by Other Parties Without Permission in the Metaverse**

The use of brands in the trade practices of a product is important to determine the quality to means of promotion in trade traffic. This is what makes the brand as one of the fields of intellectual property that has a fairly high economic value. The use of brands in trying to build a relationship between a reputation and trust of consumers, therefore business actors usually try to prevent the use of their brands by other parties who do not have permission. [1] As an important component in business activities, the brand owner has the right to be able to use the mark himself or allow other parties to use the mark, this right is called the exclusive right of the brand owner.

Digital transformation is growing faster with the times. The advancement of all-digital information technology brings people to the revolutionary business world (digital revolution era) because it is felt easier, cheaper, practical and dynamic to communicate and obtain information. [2] This can create competitive competition for some business actors who have switched to utilizing electronic transaction models to help market their products both physically and digitally. Business activities carried out on the internet are actually not much different from business activities in the real world. All business activities both through the internet and in the real world certainly cannot be separated from the use of a brand or brand of a product. The usefulness of the brand is as important as business activities in the real world, namely as the identity of a product. Brand is very important considering that business activities in today's all-digital globalization era make the scope of trade broad and cross-border. Generally, the use of marks by other parties without permission is a major problem in the field of brands. It does not rule out the possibility, the use of brands that have similarities to imitation of brands also occurs in the digital world. This was also experienced by the famous luxury goods manufacturer Hermès who found the sale of virtual bags similar to their famous Birkin Bag in the Roblox game under the name MetaBirkins by Mason Rothschild, an American digital artist without permission.

The use of this metaverse can have a big impact on competitive business competition. For companies that can implement this technology well, of course, the use of the metaverse can bring large profits and the company can also be said to be able to compete with other companies. [3] The use of digital technology in the metaverse also

supports intellectual property to develop and adapt to digital developments. However, it is undeniable that the sophistication that exists due to the development of technology also causes legal problems such as what happened to Hermès.

In essence, a trademark is a sign used in business activities to identify a product or service produced. In Indonesian law, a trademark is defined in the MIG Law as a sign that can be displayed graphically in the form of a picture, logo, name, word, letter, number, color arrangement, in 2 (two) or 3 (three) dimensional form, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by individuals or legal entities engaged in the trade of goods and/or services. However, not all signs can be considered trademarks. A new sign can only be considered a trademark if it has distinctive elements in it. The distinctive element is the ability of the sign to distinguish goods and/or services produced by other companies. The distinctive element can be considered as the soul of a trademark (Fauzi et al., 2022). The requirement of having a distinctive element in a trademark is absolute to avoid similarity with other trademarks produced by other businesses. The obligation to have a distinctive element in a trademark that must be fulfilled by every trademark owner is not only emphasized in Indonesian law, but this obligation is also emphasized in various trademark laws in various countries around the world, such as in American and French law, which also require sufficient distinctive elements for a sign to be used as a trademark. This proves that the distinctive element in a trademark is an important thing to prevent similarity that arises with other trademarks and to prevent confusion among consumers due to this similarity (Utama et al., 2021).

The MIG Law itself also emphasizes the provisions on how marks that are not allowed to be registered and/or rejected marks precisely in Article 20 of the MIG Law letter e namely "have no distinguishing power". The purpose of a brand that is considered to have no distinguishing power is like a brand that has similarities with other brands, or a mark used in a brand is too simple or even too complicated to be unclear. Therefore, it can be known that the distinguishing power of a brand is an absolute requirement, because this serves to prevent similarities that arise between a brand and other brands. In addition, the existence of differentiating power in the brand can also make it easier for consumers to buy or utilize a product, because the differentiating power of the brand can inform about the product. Consumers as buyers of goods or connoisseurs of a service should get protection with the truth that a good or service they buy is in accordance with the source and quality produced by a desired brand. [6]

The MetaBirkins bag made and sold by Rothschild through the Roblox game does have a shape similar to Hermès' Birkin Bag, which is in the form of a tote bag. However, when viewed from the visualization, there is a difference in design between Hermès' Birkin bag and Rothschild's Birkin bag, where MetaBirkins in the Roblox game describes a bag covered with fur. Although there is an additional layer of fur that covers the MetaBirkins virtual bag, the similarity in shape can weaken the distinguishing power of Birkin products. With the weakness of differentiating power due to the use of brand

elements by other parties can also cause a loss of uniqueness that exists in famous brand products.

Referring to Article 1 point 1 of the MIG Law, brands can be categorized as signs that can be displayed graphically in the form of images, sounds and names. If you pay attention to the virtual bag in the Roblox game also has a name similar to the Birkin Bag, namely MetaBirkins, by simply adding the word "Meta" in front of it as a representation that the product is an output product from the metaverse world. With the similarity caused by the presence of dominant elements such as the similarity of names and speech sounds in related brands, of course, this can create the impression of similarities between one brand and another (A. M. Ramli et al., 2021). Referring to Sudargo Gautama's statement, because of the impression of similarity due to similarities in MetaBirkins virtual bags with Hermès Birkin Bags, of course, it can cause confusion in Roblox users because the two brands are also used for similar goods. Therefore, Rothschild's MetaBirkins virtual bag can be considered to have similarities in essence with Hermès' Birkin Bag.

Similarity in essence, according to the theory of brand law, is a condition where a brand has similarities that can have the potential to confuse (a likelihood of confusion). [7] However, the explanation of similarities in essence is also explained in detail in the explanation of Article 21 paragraph (1) of the MIG Law, it is explained that, what is meant by "similarity in essence" is the similarity caused by the presence of dominant elements between one Brand and another Brand so as to give the impression of similarity, both regarding the form, way of placement, way of writing or combination of elements, as well as the similarity of speech sounds, contained in the Mark.

Brand similarity can basically occur if the brand has almost similar similarities (nearly resembles). Which in this case, MetaBirkins a brand can be considered to have similarities in essence that are almost similar to other brands of Hermès Birkin Bag because if there is found a similarity of prominent elements such as names and appearance that can give the impression of similarity. Meanwhile, Hermès itself has never done marketing in the digital world, nor has the company ever given permission or license to other parties to use their "Birkin" name. This indicates that the Rothschilds do not have the rights to use the Birkin name for the sale of MetaBirkins in the Roblox game. Therefore, the equation carried out is classified as an act of bad faith by ostensibly marketing a brand that comes from the same source.

A brand is prohibited from being used if it has elements similar to other brands, this also applies to well-known brands. Refer to Article 21 paragraph (1) of the MIG Law affirms that, "An application is rejected if the Mark is substantially or wholly similar to: b) Another party's famous mark for similar goods and/or services; c) Other parties' well-known marks for non-similar goods and/or services that meet certain requirements." Broadly speaking, factors that can be used as a reference for a brand as a well-known brand include knowledge of the mark among the wider community, the extent and duration of the scope of use of the mark, and the level of registration and commercialization of the mark in various countries. Meanwhile, in Indonesia itself, the criteria for famous brands can be found in the explanation of Article 21 of the MIG Law.

Hermès is a well-known brand, as evidenced by its global reputation that is widely known by the public, as well as investments in several countries with the opening of many Hermès stores and registration of the brand in several countries in the world. Therefore, a guarantee of legal certainty for a well-known brand should be given, considering that the more famous a brand makes the risk of imitation or infringement of the mark even greater.

Hermès never granted permission to use the famous "Birkin" name to any other party. Therefore, the use of the trademark "Birkin" on MetaBirkins Rothschild must have preceded Hermès' ability to offer Birkin products on the virtual market, because it was not authorized by Hermès to make such sales and did not have a license to use the Birkin name. A form of unfair business competition by trying to seize market share of well-known brands in order to get the maximum economic benefit without the need to build a reputation from scratch. This is certainly not in line with the principle of Incentive Theory, where every creator of an intellectual work, including a brand, should be given the right to enjoy economically the results of his creation.

The use of the name or even the virtual Birkin bag design created so similarly by Rothschild to ride on the fame and deceive the public can be considered as having bad faith in marketing a brand that appears to come from the same source as Hermès. This certainly does not reflect honest practice in industrial and commercial matters. Honest practice can be considered not fulfilled if a person is unable to show that there is no connection between their brand and the trademark of another person's business.[8] Every business actor is prohibited from using a brand that causes confusion in any way, including counterfeiting in trade that discredits goods and competitors. Every country must ensure effective protection against unhealthy competition as stipulated in Article 10 bis of the Paris Convention "...The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition..", which emphasizes that every country must ensure effective protection against unhealthy competition. Furthermore, in the following explanation, "Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition", meaning that every act of competition that does not align with honest practices can be categorized as an unfair competition.

In the legal system of brand protection in Indonesia itself, good faith is the main or absolute requirement that must be met by the trademark holder. The obligation to use the mark in good faith is also expressly stated in Article 21 paragraph (3) of the MIG Law, "... An application is rejected if it is submitted by an applicant in bad faith..". What is meant by "bad faith" itself is an act with the intention to imitate, plagiarize, or follow another party's brand for its business interests to cause unfair business competition conditions, deceive, or mislead consumers. Meanwhile, referring to the regulation of cyber activities in Indonesia, precisely Article 9 of the ITE Law, it is affirmed that every business actor who offers their products in virtual space is strictly prohibited from containing false information that can mislead users. Relating to the Rothschild's product equation that makes it appear as if the products are manufactured from the same source, indicates that the Rothschilds have used false information for profit. With the

marketing of a product that has similarities to other brands, of course, this action is contrary to the provisions as previously explained.

The use of the term "Birkin" and the similarity in appearance of the MetaBirkins owned by Rothschild indicate that he is leveraging the reputation of the Hermès Birkin Bag to attract Roblox users. In this case, Rothschild's actions can be considered as trademark infringement or passing off. A trademark can be said to cause passing off if it violates goodwill or good faith, causes misrepresentation, and results in harm. When another brand is imitated and can confuse consumers, it can be said that the business owner who took such actions does not reflect goodwill or good faith in using the related trademark. The similarity between the original and fake products can potentially cause misrepresentation or confusion, misleading or confusing consumers in choosing the desired product. As a result, this can lead to confusion among consumers and ultimately result in real losses for the legitimate trademark owner. Therefore, the sale of virtual MetaBirkins bags, which are made so similar to the Hermès Birkin Bag in appearance and sound, can be considered as a form of trademark infringement and unfair competition in the digital space.

#### **B. Legal Actions that Famous Brand Owners Can Take against the Use of Their Brands on Metaverse Virtual Products by Other Parties Without Permission**

As a brand with a high reputation, of course, the risk of using or similarity of brands by other parties that can be caused is quite large. Because in practice an intellectual property can contain risks that allow others to claim or acknowledge the intellectual work. Therefore, binding legal certainty should be realized by providing constitutional guarantees and protection of rights arising from famous brands. This is in line with the theory developed by Sherwood and known as Risk Theory.

Various international agreements have guaranteed the protection of famous marks by regulating the obligations of each member state to protect famous marks. Referring to Article 6bis of the Paris Convention explains that, "... These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith." Each member state of the Paris Convention shall expressly take action to refuse or cancel registration and prohibit the use of marks that result in confusion in marks covering goods or services identical to well-known marks that have not been registered. [1] If there is a trademark that has similarities with a well-known mark that has the potential to cause confusion, then the mark must be rejected or deregistered until its use is prohibited. Then Article 16 (i) of the TRIPs Agreement also affirms that the owner of a registered trademark has the exclusive right to prevent the use of marks similar to his own, by other parties who do not have permission, "The owner of a registered trademark shall have the exclusive right to prevent all third parties from having his consent from using in the course or trade identical or similar signs for goods or services which are identical or similar to those in respect of which trademark is registered where such use would



result in a likelihood of confusion". The importance of protection on brands with a high reputation such as well-known brands has also been applied by several countries in the world. Referring to the French trademark law which expressly prohibits the registration of a mark that has similar elements with a famous mark, the owner of a famous mark also has the right to take legal remedies in order to protect his mark from use by other parties who do not have permission. This provision is explicitly set out in French trademark law because the country's national law strongly applies the provisions contained in the instruments of the Paris Convention. While in the United States it is also emphasized the importance of protecting famous marks by denying the use of marks that have similarities to registered marks[2] and granting rights to famous mark owners to prohibit others from using marks that allow obscuration or even tarnish the reputation of famous marks, no matter how it may trigger confusion, competition, or actual economic loss. [3] This is expressly defined in the Lanham (Trademark) Act and the United States Trademark Dilution Act.

As a welfare state, Indonesia idealizes all existing policy dynamics for the benefit of public welfare. As Article 1 paragraph (3) of the 1945 Constitution, as a legal state, Indonesia is responsible for the welfare of its citizens by providing legal protection so that everyone can obtain the rights determined by law. [4] This is in line with the objectives of the Indonesian state regarding general welfare as stated in the 4th paragraph of the Preamble to the 1945 Constitution.

The unlicensed use of the brand by the Rothschilds takes place within the metaverse space. Metaverse itself is a fairly new phenomenon for now. Until now, there has been no legal regulation that specifically regulates the metaverse space. However, law can not only be interpreted as a rule that applies in society, but law is also a process and enforcement for the realization of reality in society. Therefore, the law must be dynamic as a means to create better development in society. As Mochtar Kusumaatmadja thought, namely the theory of development law, law is the whole of the rules and principles that govern the association of human life in society and aims to maintain order and includes institutions and processes in order to realize the enactment of rules in reality. [5] Given the sophistication of technology today, trade in goods and services today no longer knows the borders of countries, times, places and cultures. [6] Protection related to intellectual property, including brands, is certainly needed in any aspect so that the use of intellectual property can be relied upon in all conditions. In this case, law is not an obstacle to transformation, but rather as a means of accelerating transformation in various fields, including related to the field of intellectual property. This is in line with the view of the legal theory of transformation by (Lestari et al., 2022), where law must also act like technology that can change and even direct all elements of the state, including society progressively towards development. [7]

Hermès is one of the world's most famous fashion brands, with such a high global reputation, Hermès should get protection against imitation of every element of its brand. The MIG Law does not regulate in detail the famous marks, but in Article 21 paragraph (1) of the MIC Law, precisely in letters b and c it is affirmed that the

prohibition of the use of a mark that has similarities in essence or in whole with famous marks both similar and unsimilar. Although Indonesia does not regulate famous marks rigidly in the MIG Law, the provisions in Article 21 have proven that the Indonesian government has guaranteed legal certainty in protecting famous marks both for products in the same class and different classes. The practice of using brand elements without permission in the form of virtual products is a fairly new form of brand infringement. This also happens because of the rapid development in the information and communication technology space. The original intangible form of goods makes it difficult to apply legal certainty if there are violations related to IPR, including brands on virtual products. However, the provisions in Article 21 of the MIG Law can actually be used as a basis for enforcing the law on the prohibition of the use of brand elements of famous brands as a virtual product without permission.

The use of other brand elements both in the form of imitation and reputation piggyback will certainly cause real harm to the registered trademark owner. The existence of regulation regarding brands is certainly intended to provide protection and fairness for brand owners, as well as strive to achieve the welfare of brand use in trade practices. [8] The owner of a registered mark has the right to hold him liable for losses incurred as a result of unauthorized use of his mark. The first remedy that can be made by the owner of a famous mark if there is an equality to his mark is cancellation, as affirmed in Article 76 of the MIG Law, that

1. A claim for cancellation of a registered mark may be filed by an interested party based on the reasons referred to in Article 20 and/or Article 21.
2. The owner of an unregistered trademark may file a lawsuit as referred to in paragraph (1) after submitting an application to the Minister.
3. A cancellation lawsuit is filed with the Commercial Court against the owner of the registered Mark.

Based on this article, it can be seen that the owner of a famous mark has the right to be able to file a trademark cancellation lawsuit against a mark that has similarities with his trademark. The cancellation can also be done by submitting an application to the Minister and filing a cancellation lawsuit with the Commercial Court. In addition to the registered trademark owner, cancellation applications can also be submitted by prosecutors, foundations/institutions in the consumer field, and religious assemblies/institutions as interested parties. [9] However, as per Article 77 of the MIG Law, it is further explained that a trademark cancellation lawsuit can only be filed with a time limit of 5 years from the date of registration of the mark. If referring to the explanation in the comparison table presented by the author in the previous chapter, the determination of the period of the lawsuit applied by Indonesian trademark law is in line with French trademark law which also sets a time limit of 5 years for filing for cancellation since the violation occurred. This indicates that a brand that has similar elements with a well-known brand can be said to have committed a trademark infringement from the moment the mark is registered.

Then as a dispute resolution, the owner of a famous mark can also file a lawsuit in question in the form of a claim for compensation or termination of all actions related to the use of the mark. This is as stated in Article 83 of the MIG Law, it is explained that

1. The owner of the registered Mark and/or the licensee of the registered Mark may file a lawsuit against other parties who without the right to use the Marks that have similarities in principal or in whole for similar goods and/or services in the form of:
  - a. claims for damages; and/or
  - b. termination of all acts relating to the use of the Marks.
2. A lawsuit as referred to in paragraph (1) may also be filed by the owner of a famous mark based on a court decision.
3. The claim as referred to in paragraph (1) shall be submitted to the Commercial Court.

This legal remedy is the right of the registered trademark owner to fraudulent acts committed by other parties. The granting of the right to file a civil lawsuit is also given to the owner of a famous brand even though the trademark has not been registered in Indonesia. This indicates that Indonesian trademark law strives to provide legal protection guarantees for well-known brands. In addition to the settlement of claims as referred to in Article 83, the parties can also resolve disputes through arbitration or alternative dispute resolution (Janed, 2015). This is as explained in Article 93 of the MIG Law regarding alternative dispute resolution.

The sale of MetaBirkins by the Rothschilds, of course, has made Hermès a loss of opportunity as the first party to exercise its exclusive rights and made a loss of potential profits that should have been acceptable to the rightful owner of the brand. This is certainly very detrimental to Hermès as the rightful owner of the brand. The scope stipulated in trademark legislation as a legal instrument related to trademark infringement in cyberspace is very limited (T. S. Ramli, 2019). Given the current technological developments and the lack of specific provisions regarding the practice of using brands in the digital sphere in conventional brand regulations. Therefore, as a relevance in providing legal certainty guarantees related to lawsuit rights owned by registered trademark owners in the current digital era, in Indonesia the ITE Law is also enacted to fill the gaps in the MIG Law. The enactment of the ITE Law is a preventive effort in the cyber world and the use of technology. Precisely in Articles 38 and 39 of the ITE Law, it is explicitly affirmed regarding civil compensation claims for trademark infringement in the digital world. The ITE Law also emphasizes legal remedies that can be taken by parties who experience losses in the use of information technology. Precisely in Article 38 of the ITE Law, it is explained that,

"(1) Any Person may file a lawsuit against the party that operates the Electronic System and/or uses Information Technology that causes losses."

Then in Article 39 it is further explained that,

1. Civil lawsuits are carried out in accordance with the provisions of laws and regulations.
2. In addition to the settlement of civil claims as referred to in paragraph (1), the parties may resolve disputes through arbitration, or other alternative dispute resolution institutions in accordance with the provisions of the Laws and Regulations.

Both articles show that the ITE Law implicitly also regulates legal remedies that can be taken in the event of brand infringement in the digital world. Brand owners who feel disadvantaged due to the practice of using brands in the digital world can apply to refer to the provisions contained in the article. This signifies, if the owner of a famous brand suffers losses due to the use of his brand by other parties without permission in the digital world such as the metaverse space, then he can file a civil lawsuit against the party who caused the loss.

Legal remedies that can be taken by famous brand owners due to the losses they have suffered, both in the MIG Law and the ITE Law are actually just as strong. It's just that because the MIG Law has not explicitly regulated the use of brands in the digital sphere, therefore brand use activities in the digital scope can be aligned with the provisions in the ITE Law. When referring to Article 25 of the ITE Law, it is also explained that, "Electronic Information and/or Electronic Documents compiled into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights based on the provisions of the Laws and Regulations." These provisions prove that the regulations in the ITE Law can be harmonized and formulated by the MIG Law. [10]

This is also in line with the provisions of Article 1125(d)(1)(A) of the Trademark Cyberpiracy Prevention Act 1999

"A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person— (i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark."

A person can be held civilly liable by the owner of the mark without regard to the related goods or services, if the person has bad faith to take advantage of the mark. The right to redress will still apply even if the trademark infringement occurs in the digital space. Thus, legal action that can be taken by famous brand owners if there is unauthorized use of their brand by other parties in the metaverse, is actually the same as legal action taken if there is a trademark infringement in the real world. Legal actions that can be taken by the owner of the famous mark include filing a lawsuit for cancellation, claim for compensation or termination of all actions related to the use of the related mark. In addition to dispute resolution by filing a lawsuit, famous brand owners can also resolve disputes through arbitration or other alternative dispute resolution such as negotiation, mediation, conciliation, or other means as agreed by the parties.

Furthermore, in order to protect their brand from unauthorized use in the digital world, brand owners can take legal action by reporting to the relevant digital platform providers. This is because all digital service providers should have an obligation to provide reliable and secure electronic systems and be responsible for the operation of these systems in accordance with regulations. The electronic information in their systems must also be authentic and not in conflict with regulations, as stipulated in Article 15 and 16 of the ITE Law. The provision of internet-based or OTT services is also regulated under SE Kominfo No. 3/2016 on the Provision of Application and/or Content Services via the Internet (Over The Top), which requires OTT service providers to comply with intellectual property regulations and prohibits the provision of services that contain intellectual property violations. Therefore, if there is a trademark violation on a digital platform, the legitimate trademark owner has the right to report the suspected violation and request the related digital service provider to remove or take down the counterfeit product content to protect their brand. Removal requested by the registered trademark owner is also a form of administrative sanction under Article 83 paragraph (1) letter b of the MIG Law.

As technology usage becomes increasingly widespread, protection of intellectual property in all aspects is increasingly necessary to ensure reliable utilization in all conditions. Intellectual property utilization is indispensable in trade activities that utilize technology, including in the field of trademarks. Trademarks play an important role in identifying a product offered in trade activities. In trade activities, every business actor is obliged to adhere to all business ethics, such as respecting other business actors by competing in a healthy manner and not taking actions that potentially harm other business actors. However, in reality, the obligations that a business actor should fulfill may be violated, such as the unauthorized use of trademarks by irresponsible parties. This trademark violation not only occurs in the real world, but also in the digital world. Some countries may have regulated the use of trademarks in digital space in their legal regulations, such as France through its law, which asserts that the unauthorized use of trademarks on the Internet is also a trademark violation. Rights holders can sue those who unlawfully use their trademarks based on trademark violations or unfair competition. Until now, Indonesia has relied on legal interpretations to resolve trademark violation cases in digital space through its conventional trademark laws, which have been harmonized with technology laws through the ITE Law (A. M. Ramli et al., 2021). Although Indonesia does not have specific laws regarding digital trademark practices, the application of conventional trademark regulations remains the most relevant step in case of trademark violations in the digital world. Therefore, in this case, the courage of judges also plays a very important role in interpreting and comparing laws in trademark violation cases in the digital world to achieve legal certainty for the parties involved. The judge's decision must also be treated as a source of law, namely jurisprudence, for similar cases in the future.

Generally, the laws in a country can only apply in that country because the laws have a territorial nature. Digital transformation that occurs today makes the loss of existing barriers due to the use of internet connections. Metaverse has a broad concept,

this is what raises the question of imposing a jurisdiction in the metaverse. Because in general every state has the right to control, regulate, and limit state activities including citizens, objects and events based on their jurisdiction. To date, no country has a regulation that applies online jurisdiction. Therefore, in regulating all activities in digital media, territorial-based arrangements are still applied. However, when referring to Article 2 of the ITE Law, it is affirmed that this law applies to all legal acts both in Indonesian jurisdiction and outside Indonesian jurisdiction, which have legal consequences in Indonesian jurisdiction and/or outside Indonesian jurisdiction and harm Indonesian interests. This indicates that the ITE Law can be cross-territorial or universal, considering the use of information technology globally.

Thus, even in the practice of legal actions that occur in brands in the metaverse, the MIG Law and the ITE Law can be used to regulate all legal practices in the metaverse can be used as a reference. Therefore, although Indonesia does not yet have specific regulations regarding the metaverse, if there is a violation of the law in the field of intellectual property, namely brands in the metaverse space, then conventional legislation in Indonesia can still be used as a legal basis to get around all legal actions that occur in the metaverse. Given that currently content in digital media can be used as a digital asset, therefore legal protection of content in the metaverse world is as important as asset protection in the real world. This is because the characteristics of digital assets also have economic value which if violated will cause losses to parties who have legal ownership of the asset. Therefore, the development of the use of technology, the law must also be able to adjust various aspects of people's lives to create a better life in today's digital era.

## 5. Conclusion

Based on the results of the analysis of the research conducted, researchers can conclude that legal actions against the use of famous brands on virtual products by other parties without permission in the metaverse have fulfilled the elements of passing off and spreading false information due to bad faith that is contrary to Article 21 paragraph (3) of the MIG Law and Article 9 of the ITE Law as a form of brand infringement and unfair business competition against brands Hermès is famous in the digital space. Therefore, famous trademark owners can apply for trademark cancellation to the Commercial Court in accordance with Article 76 of the MIG Law, resolve disputes by filing civil lawsuits or through arbitration and other alternative settlement institutions as per Articles 83 and 93 of the MIG Law, and trademark owners can also file complaints to the relevant digital platform provider to remove or take down against the content of counterfeit products as a manifestation of administrative sanctions as the MIG Law which has been harmonized with the ITE Law.

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