



Patent Attorney TJ Mantooth PASHION - All About The Case of the "Metabirkins"

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As debates heat up of who is right and who is wrong, T.J. Mantooth, partner/shareholder at the American law firm Hall Estill, who also focuses on patent prosecution, including the drafting, enforcement, and defense of patent rights and an expert with NFTs and copyright infringement cases, shares his thoughts on the Hermes lawsuit:

“This case is interesting because it cites trademark infringement instead of copyright infringement. Theoretically, a trademark infringement claim would have more teeth and enforceability than copyright infringement. However, there does not appear to be subject matter in the NFT that explicitly infringes an active Hermes trademark,” explains TJ as he reviews the case. “That is, review of the Federal US Trademark database returns registered Trademarks for the name “Hermes” and “Birkin” but does not appear to have a registration for the shape or likeness of the bag, in logo or graphic form. Hence, this case appears to hinge on common law trademark rights, which are unregistered with the Trademark Office in D.C.”

“On Hermes side, there can be an association of the shape/style of a handbag with a brand that is protectable under common law trademark rights. On the opposite side, transforming portions of the appearance of a handbag can provide artistic commentary and/or parody that can be exempted from trademark infringement as free speech under the first amendment,” says TJ.

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