

NUNZIANTE • MAGRONE



29 April, 2024



5th IP Case Law Conference 2024



USA - *Hermès Int'l v. Rothschild*



Hermès Int'l v. Rothschild, No. 1:22-cv-00384 JSR (S.D.N.Y.)



USA - *Hermès Int'l v. Rothschild*

«[G]iven the likelihood that the continued sale and marketing of the MetaBirkins NFTs will generate **confusion as to source among the public**, Rothschild and any “other persons who are in active concert or participation with him,” including his associates, business partners, and others he has commissioned to market the MetaBirkins NFTs, are **enjoined from using the Birkin marks or otherwise misleading the public about the source of the MetaBirkins NFTs** [...] »

Hermès Int'l v. Rothschild, No. 1:22-cv-00384 JSR (S.D.N.Y. June 23, 2023)



USA – Yuga Labs v. Ripps



6486

12,198 ETH

Last sale: 11,51 WETH



2001

12,2 ETH

Last sale: 25,5 ETH



9335

12,46 ETH

Last sale: 11,76 WETH



5730

12,47 ETH

Last sale: 87 ETH



5954

12,69 ETH

Last sale: 13,33 ETH



6579

12,7 ETH

Last sale: 30,9 ETH



585

12,7 ETH

Last sale: 72 ETH



7943

12,94 ETH

Last sale: 11,27 WETH



6660

12,99 ETH

Last sale: 1,3 ETH



7875

13 ETH

Last sale: 59 ETH



3265

13,74 ETH

Last sale: 11,87 WETH



3586

13,74 ETH

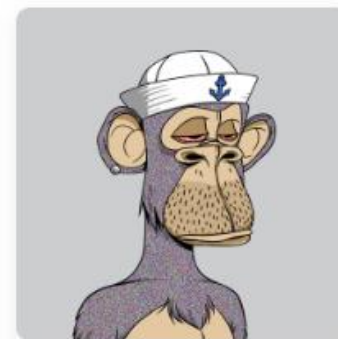
Last sale: 12,62 WETH



9968

13,79 ETH

Last sale: 13,6 ETH



1261

13,82 ETH

Last sale: 0,78 ETH



USA – Yuga Labs v. Ripps

«Moreover, as the court in *Hermes* concluded, “[i]ndividuals do not purchase NFTs to own a ‘digital deed’ divorced from any other asset: they buy them precisely so that they can **exclusively own the content associated with the NFT.**” [...]

“Thus, the title “**MetaBirkins**” should be understood to refer to both the NFT and the digital image with which it is associated. [...] the relevant consumers did **not** distinguish the NFTs offered by Mr. Rothschild from the underlying MetaBirkins images associated with the NFTs and, instead, tended to use the term “MetaBirkins NFTs” to refer to **both**”»

Yuga Labs. v. Ripps, 2:22-cv-04355-JFW-JEM



— EU – *Juventus Football Club S.p.A. v. Blockeras S.r.l.*



Court of Rome, 20/07/2022



EU – *Juventus Football Club S.p.A. v. Blockeras S.r.l.*

The Court took into consideration that:

- Juventus is the proprietor of **reputed marks**, as they relate to the most successful Italian football team with the largest number of fans in Italy and abroad.
- The registration of the marks expressly states (in particular for **Class 9**) that they also cover goods not included in the Nice Classification and that they also cover **downloadable digital images** (*pubblicazioni elettroniche scaricabili*).
- Juventus has also established that it is **active in the field of cryptogames or blockchain games**, i.e. online video games based on blockchain technologies and the use of cryptocurrencies and/or NFTs.

Court of Rome, 20/07/2022



UK – *Lavinia Deborah Osbourne v Persons Unknown* *Ozone Networks Inc trading as OpenSea*



OpenSea [2022] EWHC 1021 (Comm) – Case No. CL-2022-000110



UK – *Lavinia Deborah Osbourne v Persons Unknown* *Ozone Networks Inc trading as OpenSea*

*«I am satisfied on the basis of the evidence available that the claimant has demonstrated a good arguable case that she has been defrauded of the non-fungible tokens to which she refers in her evidence. There is clearly going to be an issue at some stage as to whether non-fungible tokens constitute property for the purposes of the law of England and Wales, but I am satisfied on the basis of the submissions made on behalf of the claimant **that there is at least a realistically arguable case that such tokens are to be treated as property as a matter of English law.**»*

OpenSea [2022] EWHC 1021 (Comm) – Case No. CL-2022-000110



EU – *RAI v. Chiara Biancheri*



Italian Supreme Court, 16/01/2023, No. 1107



EU – RAI v. Chiara Biancheri

« RAI contends that the Court of Appeal erred in qualifying as a work of authorship an image generated by software and not attributable to a creative idea of its alleged author. [...]

*It is certainly **not sufficient for this purpose the other party's admission that they had used software to generate the image**, a circumstance that, as the claimant concedes, is still **compatible with the elaboration of a work of authorship with a level of creativity** that should only be **scrutinised with greater rigour**, if, as happened in this case, RAI did not ask the judges of the merits to reject the claim for that reason.*

*In fact, it would have required a **factual assessment to ascertain whether and to what extent the use of the tool had absorbed the creative elaboration of the artist who made use of it.** »*

Italian Supreme Court, 16/01/2023, No. 1107



UK – *Getty Images v. Stability AI*

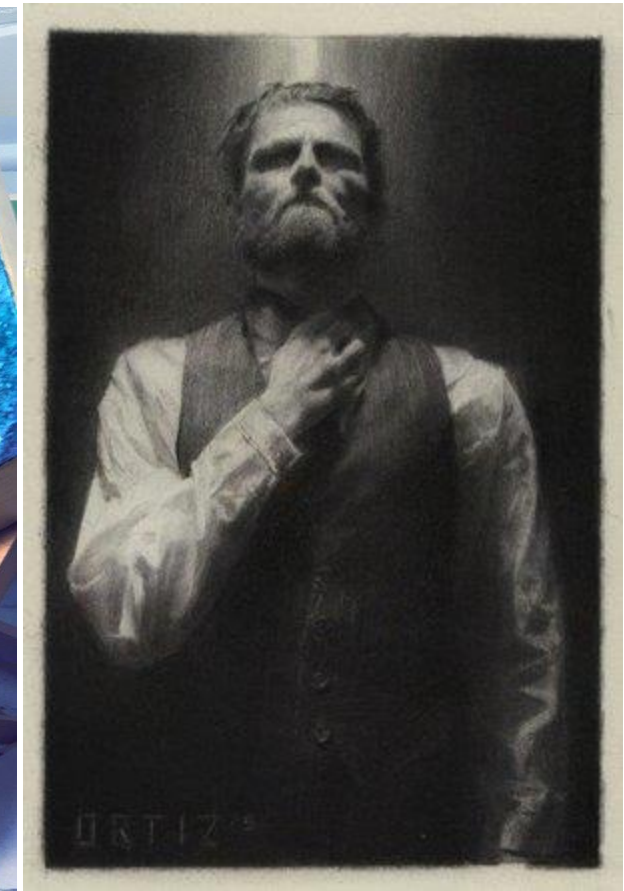
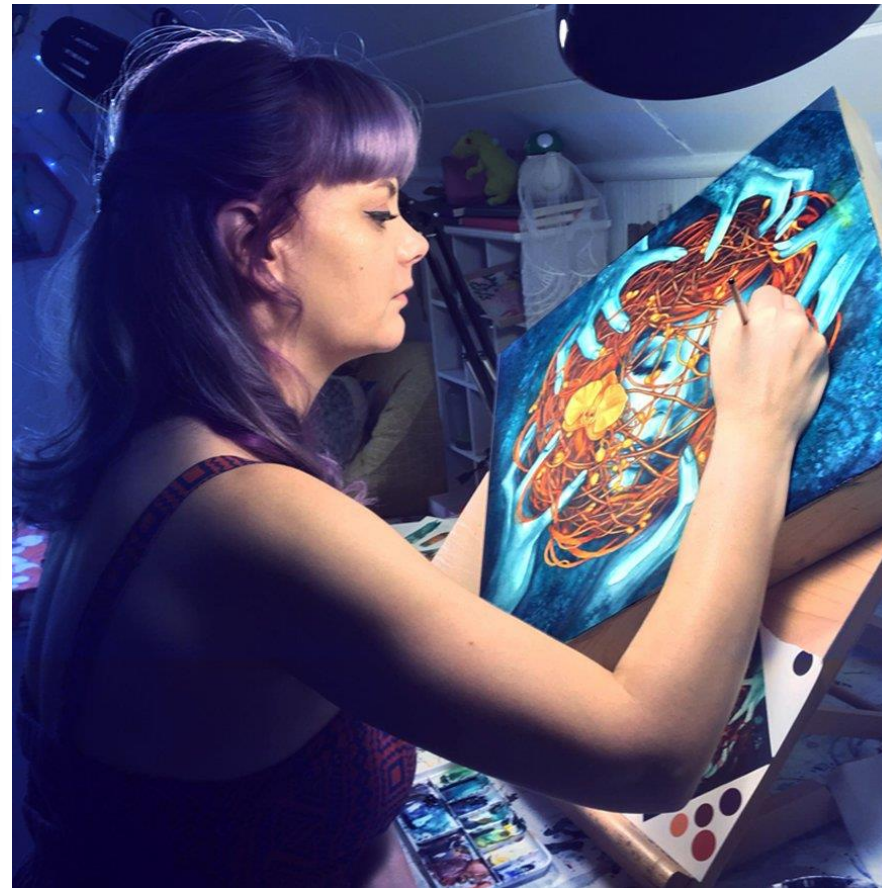


An image created by Stable Diffusion showing a recreation of Getty Images' watermark. Image: The Verge / Stable Diffusion

Getty Images (US), Inc & ors v Stability AI Ltd [2023] EWHC 3090 (Ch)



USA – Andersen v. Stability AI Ltd



Andersen v. Stability AI Ltd., 23-cv-00201-WHO, 12 (N.D. Cal. Oct. 30, 2023)



USA – Andersen v. Stability AI Ltd

« [...] *it is simply not plausible that every Training Image used to train Stable Diffusion was copyrighted (as opposed to copyrightable), or that all DeviantArt users' Output Images rely upon (theoretically) copyrighted Training Images, and therefore all Output images are derivative images.*

[...] [E]ven if plaintiffs narrow their allegations to limit them to Output Images that draw upon Training Images based upon copyrighted images, **I am not convinced that copyright claims based a derivative theory can survive absent “substantial similarity” type allegations.** The cases plaintiffs rely on appear to recognize that the alleged infringer's derivative work must still bear some similarity to the original work or contain the protected elements of the original work»

Andersen v. Stability AI Ltd., 23-cv-00201-WHO, 12 (N.D. Cal. Oct. 30, 2023)



USA – *Thaler v. Perlmutter*



'A Recent Entrance to Paradise', an artwork that Stephen Thaler argues was authored by AI



USA – *Thaler v. Perlmutter*

«*The Register did not err in denying the copyright registration application presented by plaintiff. United States copyright law protects only works of human creation. Plaintiff correctly observes that throughout its long history, copyright law has proven malleable enough to cover **works created with or involving technologies developed long after traditional media of writings memorialized on paper.** [...]*

*Copyright is designed to adapt with the times. Underlying that adaptability, however, has been a **consistent understanding that human creativity is the sine qua non at the core of copyrightability,** even as that human creativity is channeled through new tools or into new media.[...]*

Copyright has never stretched so far, however, as to protect works generated by new forms of technology operating absent any guiding human hand, as plaintiff urges here. Human authorship is a bedrock requirement of copyright.»

Thaler v. Perlmutter, Civil Action 22-1564 (BAH) (D.D.C. Aug. 18, 2023)

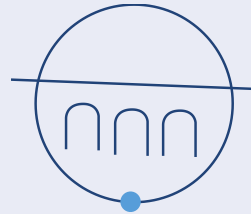
Grappling with new technologies

- ❖ **Adapting Legal Frameworks:** Courts are currently navigating the complexities of adapting existing legal frameworks to address IP issues in virtual environments, highlighting the need for proactive measures to ensure effective enforcement.
- ❖ **Continued Learning and Adaptation:** Continuous learning and adaptation are imperative for both legal professionals and judicial systems to keep pace with the rapid evolution of technology and its implications for intellectual property rights enforcement and protection.



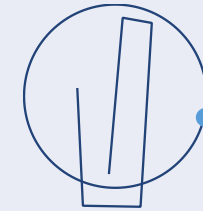
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