

Advertising in the metaverse. A quasi-legal overview

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Abstract. Maybe it started as traditionally and old-fashion as possible, just with billboards and postcards. Then radio. Television. Digital billboards on the streets. Telephones. Internet. And from the internet.. things just exploded – an unprecedented explosion. The internet was maybe the Big Bang of the advertising. The moment advertising have started expanding everywhere and in any possible shape: videos, photos, articles, bots, GIFs, voices, online advertising, personalised advertising, targeted advertising, display advertising, search advertising, programmatic advertising, advertising by use of the internet-of-things (IoT). When one could say that the state of arts in advertising was reached and that expanding advertising universe started to cool down, technology went further again. A virtual and limitless world has been created and with it, the potential of advertising has been once again unveiled. Advertising was re-born in a new universe, the metaverse, claimed to be lawless. This paper will focus on how ‘lawless’ is the advertising in the metaverse and what possible legal issues might be encountered by publishers, advertisers, influencers and consumers.

1 Introduction. The metaverse and the advertising industry: coming together

There is no consensus on the definition of the metaverse [1], but it is generally agreed that it can be described as a virtual [2] alternative parallel [3] world. Starting with Neal Stephenson, who imagined in 1992 a virtual world filled with advertisements, and coming to these days, when building that world for subsidiary declared marketing purposes has become the goal of one of the largest tech companies in the world, one can notice that the metaverse is an environment more than suitable for advertising. Lately, there has been a worldwide focus on the potential of advertising in the metaverse, also reflected by one of the largest tech companies changing its name from ‘Facebook’ to Meta. The change comes as a metaphor for the transition from online personalised advertising on the social media to online personalised advertising in the metaverse. The high compatibility between metaverse and advertising has been also acknowledged by the European Parliament [4], which recognizes that the advertising strategies already started to include the concept of metaverse.

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So, the metaverse inspired the name of one of the tech giants, more than 30 years after being introduced to the world for the first time. Now, the idea of building a metaverse is more alive than ever, even if during these 30 years many other dreams and attempts have been born and died one after the other. As the metaverse is a copy of the real life, and real life includes advertisements almost everywhere, then the metaverse will also include them, being a new environment for advertising.

The scope of this paper is to identify the general and particular rules that are applicable to the metaverse advertising, also focusing on distinct features of the metaverse and their legal implications, such as the avatars. Legal fields such as data protection and intellectual property will be further discussed in the context of the advertising in the metaverse. The directions that will be followed throughout the paper start with describing the immersion of advertising in the metaverse, continues with the relevant marketing features of the virtual world, the contractual architecture and in particular the six most frequent objects of the contract for advertising services in the metaverse. Finally, for a better understanding of the metaverse and the contractual clauses agreed upon by consumers (and not only) for entering the virtual world, a study-case of a metaverse for marketing purposes will be presented in details.

2 Advertising in the metaverse

Each metaverse aims at being populated, highly populated, which means being accessed by large numbers of users. The reason behind this ambitious goal is elementary – it cannot exist an alternative digital world if it is not populated; it simply won't be a world anymore. One could argue that bypassing this requirement is easy by using bots and simulate virtual human interactions. Nothing could be truer, but when considering the advertising purposes of a metaverse, the requirement of numerous human users is not desirable to be sidestepped.

A metaverse has to attract people, real ones, and convince them to become users. The importance of this is revealed by quite a famous example of an unsuccessful event in the metaverse: the European Commission organised a rave party in the digital world [5], but only 6 participants showed up, while the costs of the event amounted to EUR 387 000. European Commission's action was highly disputed afterwards, as the costs have been unjustified, and the event was labelled as a major failure. This particular example shows the importance of having a populated metaverse, also in light of the costs for supporting such technology. A high revenue should be generated in order to cover the costs for creating and maintaining the virtual world and its entire digital infrastructure. Having this in mind, when a brand decides to make use of a metaverse, the costs incurred should be at least covered by the revenue generated, meaning that the return on investment (ROI) should be mandatory positive. If the ROI is negative, it means a loss on investment, so the project of the metaverse has caused nothing but a loss of money for the brand who invested in the marketing idea.

We came to the conclusion that a metaverse needs users. As most of them are consumers in real-life, the metaverses are the new 'places' where consumers can be found, especially in the post-pandemic times, after experiencing a mass movement towards online shopping, virtual social interactions and digital leisure activities. Metaverse technology represents a new channel for the brands to reach their consumers [2]. It is deemed to intensify the brand experience [6] and to also allow brands to create new experiences [7] for their customers, otherwise impossible in the physical world. Increasing brand awareness means not only more sales, but also a highest valuation of the brand as when it is known, it is considered 'to represent a significant component of the overall value of a company' [8].

At the same time, as it simulates close to real-life experiences, consumers are allowed and provided with the tools to have a behaviour as normal and natural as possible. When the metaverse gives out of ordinary experiences, consumers are given the opportunity to explore new actions and behaviours, inaccessible in the physical world. So the consumers are able to replicate their daily behaviour in the metaverse, while also going beyond the laws of physics and experiencing new actions and reactions – everything in a digital and brand-controlled metaverse. As consumers' activity is already tracked in the online world, the metaverse represents a new source for data about consumers, their decision mechanism and behaviours.

In the light of the above, the metaverse has a double usefulness from a marketing [9] point of view: a new channel for advertising and a new environment for data on consumers to be collected. It represents the scene of experiential marketing [10] which focuses on consumer experiences and their overall greater satisfaction. The ultimate goal when used for advertising purposes remains influencing their commercial decision and establishing or enhancing the relationship with the brands and the products and/or services they have to offer.

But as we already had videogames, also qualified as virtual worlds, what does the metaverse bring new? As explained, the metaverse revolves around the idea of a new, alternative world, where the impossible is possible and even more. The videogames promise only playing (in the end, it is just a game), the metaverse promises much more – traveling, working, social experiences, events studying, malls, restaurants. Universities as Stanford already created their metaverses for online studies. Marketplaces exists, events exists (*e.g.* Decentraland Metaverse Fashion Week 2023 [11]). However, even with these new activities available, the core idea remains the same – we do play in the metaverse: we play our avatar, we play by attending events, but we also go beyond simply playing.

Notwithstanding, there might be a significant difference between a metaverse and a videogame, important also from a legal perspective. As any brand has to adapt to the local market, this is also applicable for the metaverse. This would be one of the major differences between videogames and metaverses: while videogames are indeed global and the same game and rules are applicable and available for any player, the metaverse, globally available, should be adapted to the local culture, especially the ones built exclusively for advertising purposes. This strategy is best reflected by Circle Square's motto 'Work global, think local' [12].

Meta's objective is closely following the general goal of a metaverse: to shift the real world's social and economic interactions in their own virtual world. This would also lead to transferring the electronic commerce [13] in the metaverse, a fact already proven by the creation of marketplaces (*e.g.* the marketplace available on Xclusiverse [14]) and the arrival of phigital products (also available on Xclusiverse [15]). Phigital products are merging the offline world products with the digital ones, being mostly used in offline to online (O2O) marketing strategies [16].

The electronic commerce is based on advertising – the products or the services should be first advertised, made known to the customers, meaning that advertising should actually precede any other commercial activity. After the name change, Meta company is expected to also transfer the personalised advertising into the metaverse, as this economic activity is acknowledged to be immensely 'profitable' [17], in particular for it. The advertising purpose is also acknowledged by other metaverses providers, such as Roblox [18], which states in the terms and conditions of the platform that the use of their metaverses is permitted for advertising purposes [19] among others.

2.1 Advertising-relevant features of the metaverse

The metaverse makes way for a new type of advertising to take off – the immersive advertising, which is now deemed to be the most engaging type [20]. This is the form of advertising that consumers can interact with, in contrast to the more traditional advertising which they could only observe [21]. The consumers, as users of the metaverse, are practically immersed into the advertising, which is no longer only a bidimensional visual representation. Consumers are immersed in the advertising itself, especially when the metaverse is entered via virtual reality (VR) technology [22]. In this way, the metaverse provides tools for the marketers to enrich the consumer experience and to enhance their sensorial perception.

There are also metaverses that do not imply using VR technology for accessing them. These might be accessed upon creating an avatar, which can be metaphorically described as the key to the door of the metaverse.

2.1.1 Avatars: metaverse-owned and user-generated content

Consumers could enter the metaverse after creating an avatar, which is afterwards used for participating in the digital life. Consequently, creating and controlling an avatar might be one of the most important steps and features of the metaverse. An avatar is the visual digital appearance taken by the users and which helps any other participants to the metaverse to identify them in the virtual interactions. It has a visual appearance, decided by the users, and a name (the latest might not be necessary in all the metaverses). The appearance is decided by the users, but it is limited to the options provided by the developer of the metaverse (for example, the user can choose the style and colour of the hair of the avatar, as well as the clothes to be worn by the avatar, based on the available options. At the same time, there might be metaverses that allow users to create new items for their avatars, also providing them with the tools to do so. However, even this freedom to create is limited to the tools available, meaning that new clothes could be created only by using the features developed by the provider of the metaverse.

As users have a significant input in the process of creating their avatars, either by unique combinations of the already existing items or creating completely new items for their avatars, an avatar is a mixture of user-generated content and the content created by the developer of the metaverse. Due to the potential of being qualified as user-generated content, metaverses include in their terms and conditions certain related rights. Such an example would be Roblox [19]; however, under the same terms and conditions, the users agree to grant Roblox a license for using the avatar they created, the license being *perpetual, worldwide, non-exclusive, royalty-free* [19], with the subsequent right to sublicense. This is why it would be advisable for brands which include in their designs real-world protected IP work (including logos [8], trademarks, designs) to pay attention to such clauses and eventually to conclude a separate agreement when they enter the metaverse through avatars as means of marketing. As an example of good practices in this respect, Roblox specifies expressly in terms and conditions that the license and right to use cover *any trademarks owned or controlled* by the creator of the avatar, uploaded in Roblox for the purpose of creating it. Nevertheless, this is not applicable when the user creates virtual items (not the avatar itself). In this last case, the user still keeps the intellectual property rights in full over *‘the copyrighted material owned or controlled (...) that has been published off of the Platform prior to the time that it was uploaded by Creator onto the Platform’*. For example, if the marketing team from Dior brand would reproduce in the metaverse a Dior suit or gown, the right to use the virtual items will not be licensed to Roblox.

2.1.2 Virtual items

The metaverse is filled with virtual items, inspired (or not) from the real world. For reflecting everything around us in the daily life, real-products might have their virtual replica in the metaverse. However, this raises the question of the intellectual property rights over these real-life products, brought in the digital worlds for making it more 'real', more convincing.

This issue has been raised in the past in relation to filmmaking, which sometimes has the same core guideline: reflect the reality as much as possible. For example, in many movies one might see on the streets the same cars usually encountered in real life. The same is applicable for clothes and many other products – filmmakers do not design and create everything from scratch just for the movie (imagine the costs). This does not imply directly asking for the permission of all the brands for the use of all the products that appear in the movie. A similar conclusion has been reached to in 2017 in the context of videogames, when the developer of a game named *The Call of Duty*, copied the model of a real-world vehicle produced by AM General [23]. AM General sued the producer of the game, but the court decided that as the video game was intended to reproduce the reality, it is allowed to copy elements from the actual world [24]. Consequently, the ruling was in favour of the video game. There is a hypothesis that the same reasoning might apply to the metaverse [25]. However, there have also been cases when the courts decided that the brand creators might have gone too far with copying products, as in the case of the recent *Metabirkins* lawsuit [26], which has been won by the brand (Hermes [27]). Anyway, the particular details of the lawsuits should also be considered, as *Metabirkins* lawsuit did not focused specifically on the metaverse, but on NFTs traded individually.

2.2 Contractual aspects of advertising in the metaverse

Entrance in the metaverse is preceded by concluding a contract with the metaverse provider or owner, which takes the shape of 'terms and conditions' when it comes to normal users. However, the same is not applicable when brands enter the metaverse for advertising purposes. The contract agreed upon by the owner of the metaverse and the user has is one of adhesion and is in general 'for free'. As metaverses intend to make profit out of advertising in the new world, they will conclude advertising contracts with the brands that wish to benefit of the new digital raising worlds. This is how the metaverses bring money to their developers or owners, when are offered for free to the public.

2.2.1 Contractual parties

The parties to the contract for advertising services in the metaverse are not different from the traditional ones. The basic structure of an advertising contract involves the publisher and the advertiser. In the case of metaverse, the publisher would be its owner, who is not necessarily the creator or the developer. The advertiser is the brand who wishes for its products and/or services to be promoted in the metaverse. Sometimes, this structure might be tripartite and additionally involve a marketing agency. These agencies are constantly adapting themselves to the new types and means of marketing, meaning that agencies that help brands with choosing the suitable metaverse and intermediating the contractual relationship already exist [28]. Just as how in the past they adapted to influencer marketing and ended up with an impressive portfolio of influencers ready to collaborate, now they have the tools for metaverse advertising.

2.2.2 Influencers as a party to the metaverse advertising contract

When it comes to influencer marketing in the new digital world, one could argue that the two types of advertising are mutually exclusive. The reality is just the opposite, influencers are not excluded from the metaverse, but are rather more present than ever as they go hand in hand for the digital marketing campaigns. What is different is that now there are two categories of influencers used - real life and metaverse influencers, the last category being further divided into two types: human influencers and virtual influencers. Metaverse influencers that also exist in real life might appear just as a replica of the real person – the so-called ‘digital twins’ [29], a concept also applicable to celebrities that have an identical digital representation/appearance. The virtual influencers might be creations of the developer of the metaverse or other users’, even AI-generated [29], with their existence limited to the digital world.

The metaverses need, as previously explained, to be populated. If they do not have a high human traffic, then there would be almost no ROI because there won’t be generated any commercial decision or brand awareness. Currently, there are many metaverses for consumers and some people might not even be tempted to join one, so they must somehow be attracted to these new digital worlds. This is the moment when the influencers step in: they no longer advertise only the brand, but also its metaverse, hence inviting their audience to join the digital world of the brand they’re promoting. Of course, they have to lead by the power of example, so often they create their own avatars in the metaverse, for encouraging their community of followers to do the same. A concrete example would be the metaverse created by Circle Square for Lacoste, which resembles more to a game and it involves influencers who are supposed to play and share their score on social media in order to raise awareness among customers [30]. Shiseido is also among the brands that use influencers for promoting their metaverses.

A different perspective is that the metaverses might actually be the new social media platform for the new influencers to grow or for the old ones to migrate to. Consequently, the same social media influencers would now be available for interactions with the users in the metaverse and for the same advertising activities. As a result, influencers could also be hired for continuing their activity further in the metaverse, notwithstanding they keep the status of influencer. At the same time, new influencers might appear solely in the metaverse, without existing on any other platform. Someone might create an avatar, have a lot of interactions and outstanding activity, gain popularity and ‘followers’, hence becoming an influencer in the metaverse. These users could also conclude advertising contracts for products and/or services advertising to the users in the metaverse.

Finally, within the metaverse the avatars could not even be human-created and controlled, but computer-generated, even by use of artificial intelligence. These avatars could adopt a human-like behaviour, gain popularity and become virtual influencers. There are already plenty of them with no real existence. Amazon, Puma, Lexus, Samsung, Dior, Toyota, Dr. Pepper, Porsche, Calvin Klein and KFC are brands that have already used bots for their marketing campaigns. Air Asia has the virtual influencer Miss Ava. The fully digitally-generated influencers are also known as computer-generated imagery influencers [31] or computer-generated fictional characters [32]. The difference between this type of influencers and real human beings will raise more issues and worries in relation to the effect of the influencer marketing on the consumers. These digital influencers are flexible, with no control, and might actually be created to be perfect from all points of view: the perfect party to the contract that performs the contract precisely, and a flawless appearance, voice and behaviour, desirable by any user of social media. Brands might want to ‘contract’ with these influencers so they have their products and/or services promoted in the metaverse. In this

situation, the digital influencer will not be party to the contract, but the person (moral or physical), that owns and controls it.

Advertising in the metaverse and specific marketing campaigns do not impact only the advertising contract, but also any other international trade law contracts that imply clauses related to advertising, such as distributorship, dealership and franchise. The contractual clauses providing rights and/or obligations for advertising the products that are distributed and the services that are franchised might be shaped up but the characteristics of the advertising in the metaverse.

2.2.3 The right to advertise in the metaverse: distributorship and franchise contracts

In a franchise or distributorship contract, the franchisor and the distributor are the parties in charge of marketing the products and/or the services on the local market in which they are doing business and performing the contracts. Sometimes, the marketing campaigns are not coordinated in a centralised manner, but rather the local teams take care of it, meaning that the franchisor or the distributor handles entirely the local marketing. In general, these parties are allowed to advertise the products and/or services only locally, without being allowed to interfere with the consumers from areas in which another franchisor or distributor has exclusivity. Consequently, the license granted for the use of intellectual property rights and even the right to advertise are narrowed to a precise territory [33].

Online advertising in a designated area is possible thanks to geo-localisation services together with the possibility to select the customers from a certain area to be targeted. Nevertheless, it is still debatable whether the metaverses will provide the same tools for being able to choose the location of the customers who see the advertisement. Of course, a few metaverses will likely have this option, but as some metaverses are built to be global and accessible from everywhere, advertising in the context of franchise and distributorship contracts might need to be reconsidered.

Finally, as the metaverse is not linked directly to a territory, there might be issues concerning the choice of advertising the products and/or services in the metaverse that replicates the real world – will the same real territory limitations apply in the metaverse? Meaning that if the distributors have exclusivity only for Europe and the metaverse reproduces the entire globe, will they be allowed to advertise the products in the digital United States of America? These are questions still to be provided with an answer.

2.2.4 Object of the metaverse advertising contract

In the context of advertising in the metaverse, the object of the advertising contract differs depending on the type of the metaverse, marketing campaign and the advertising methods and tools chosen by the brand. The limitless virtual worlds inevitable lead to, well, not limitless objects of the contract, but at least quite a large variety. We will further discuss six of these which we deem to be the most common.

Even if they are different, all of the contractual objects might imply the same performance – paying for the computer code, which would be available in the code/software of the metaverse for the agreed contractual period. Subsequent services such as IT maintenance/service might also be included.

2.2.4.1 Product placement

The object of the contract for metaverse advertising could be product placement, which is the root of embedded advertising [29] and takes a really different shape in the virtual world. If in the real-world placing a product is generally used in audio-visual advertising such as television, online videos, and it implies placing a well-known or at least recognizable product of the brand in the landscape/scenario, in the metaverse, a virtual world, the real product is of course no longer used. What is used instead is a digital replica of a real product. The product is nothing but lines of computer code, read by a specific computer programme that can then display the visual representation of the code. It could be branded clothes for dressing up the avatar or simply branded products available to be bought by avatars. A new and specific type of product placement is making phigital products available in the metaverse – physical products that can be visualised and even controlled from the digital environment.

Product placement is more likely to be experienced in metaverses with a worldwide dimension and availability, built by companies who aim to develop a ‘major virtual world’ and to ‘attract massive amounts of users’ [34].

In general, one would experience this type of advertising while watching television or any other audio-visual content on a digital device (laptop, telephone, tablet etc). In that content, at some point, either someone consumes a branded product intentionally, either it is placed around the characters/people or in the surrounding with the aim of being noticed by the viewers. Nevertheless, that content and the product that is placed is the same for all the viewers, meaning that everyone who watches for example a TV show will see the exact product being placed.

The metaverse changes the game in what concerns product placements. It allows for this advertising method to be personalised [35], just as ordinary display online advertising does. This means that while someone is in a metaverse, if he/she goes in a bar, then that person might see on the tables only coke (if he/she does not drink alcohol), and another avatar might see only beer (if they usually drink it and in particular if it is their favourite alcohol beverage). The products will be placed around the users depending on their preferences. Everyone’s ads and placed products will be possibly tailored, meaning that the metaverse has the potential to be different depending on the user, thus personalised.

Nonetheless, the personalisation of advertising in the metaverse might increase the level of polarization in societies. As in general the personalised advertising is based on algorithms that recommend the users certain products/services, it will further appear as a filter that will lead to creating virtual existential bubbles in which each avatar (real-life consumer) will digitally live and see only what they are interested in, while shut off from alternative products and services [34]. The metaverse will definitely influence the products and services consumers are exposed to [17].

2.2.4.2 ‘Buying’ land

The second object of the contract would be buying virtual ‘land’ in the metaverse and ‘building’ a virtual presence. For example, McDonald’s might decide to be permanently present in the metaverse. Let’s assume they would re-enter the metaverse by placing there a long-lasting McDonald’s restaurant. Of course, the real aim is advertising, as they will not be actually selling food and making profit – avatars, obviously, do not need food as humans. Similarly, a law firm in the United States of America bought digital land for building up their digital presence through an office in the metaverse [36].

An example of a metaverse oriented towards selling digital land is Decentraland [37]. The terms and conditions of Decentraland acknowledge the possibility of doing advertising by

using their site and the tools provided, as these also provide the liability for advertising [38] and unauthorized advertising [39], which implies the opposite, *i.e.* the existence of *authorized* advertising. Making land available to be bought is a win-win situation, because populating a metaverse with familiar places might attract users and increase traffic in the metaverse. It would also maybe make it easier for the developer, as it does not have to imagine places, but rather use the architecture of the existing ones.

From a legal point of view, selling land in the metaverse equals to granting a right to use and to modify and/or have modified the computer code lines that turn into the visual representation of the ‘land’ that is bought. If the metaverse is providing tools for building on that land, the actual activity of building will reflect in the computer code lines that will be modified. If agreed, the buyer might even ask the developer to build the construction it wishes, which means that the developer will modify the computer code for having the precise design of the building ordered by the buyer to appear on his digital land.

2.2.4.3 *Hosting an event*

Advertising can also be done by hosting events. Now, these events can take place virtually, in the metaverse. We deem that sometimes, behind these events there might be a co-branding contract [40]. This is applicable especially when in the out-of-the metaverse advertisements for promoting the event, there is a noticeably focus also on the brand that owns the metaverse. Popular examples are related to the Super Bowl: a commercial of the Super Bowl made available only in the metaverse [41] - so for seeing it, people were ‘forced’ to join the metaverse; and a future concert also in relation to the Super Bowl [42], available only in the metaverse – once again, for attending the concert, people have to only enter the metaverse. Another example is the Fashion Week organised by Decentraland in 2022, to which brands have been invited to attend. Estee Lauder [33], Philipp Plein and Forever 21 have been among the attendees. The metaverse also hosted digital parties, art expositions and even panels on fashion [43], such as Gucci Garden Experience [44] [45], held in Roblox [46] metaverse.

When hosting an event in the metaverse, one that is popular and highly looked after in the physical world, basically, both parties of the contract win – the fans of the advertiser enter the metaverse for their brand (especially when a unique event is organised, available only in the metaverse, as it has already happened), hence increasing the ‘population’ of the metaverse, while the advertiser benefits from the already existing users on the metaverse. These types of events also lead to highly increasing brand awareness both in the metaverse and outside (as the events are also promoted in the real world, being generally announced as partnerships).

2.2.4.4 *The metaverse itself as an advertisement*

Brands might contract developers of metaverses for having created their own branded-metaverse. Examples of such a developers are Keiichi, which listed among its client Nike, Bulgari, Sony, Nokia [47], and Circle Square [48], who worked for brands like Lacoste, Toblerone, NARS, Kiehl’s, Nestle and Godiva. NARS [49] brand came up with a beauty-verse, defined as a ‘brand world’ [50] and named ‘NONSTOP NARS universe’. Dior [51] also contracted for a metaverse that combines retail with tester experience; the result has been a ‘timeless’ and ‘location-free’ [52] virtual shop. This is also applicable to the beauty-verses, digital worlds built just for advertising beauty products of a particular beauty brand. Shiseido [53] is another example of beauty brand that choose to have a beauty-verse for marketing purposes.

Similarly, there are metaverse providers that already allow brands to use their tools and to create their own small virtual world on their platform with multiple metaverses. For instance, Roblox allows brands to design branded metaverses on the platform; Nike is one of the brands who already benefitted of these services and created ‘Nikeland’ [54].

In all of the above specific cases, there is no actual advertising contract concluded with the developer of the metaverse, even if the final goal of the brand is to use it in the context of a marketing campaign, for advertising purposes. The brand orders the developer to create a metaverse, based on the instructions it provides. After completion, the brand will own and control the metaverse. However, due to the complexity of such computer programming work, the metaverse might be hosted on the platform of the developer, so it will continue to provide maintenance and eventually software services to the brand, during the entire availability of the metaverse for the user to join it.

What is more interesting is that co-branding contracts might as well result in new metaverses. More specifically, the brands, parties to the co-branding contracts, might agree to create a metaverse dedicated to their contract, with both brands being digitally displayed within the virtual world. Such an example is Mistaverse [55], created by Axe [56] and Fortnite [57], which is basically a virtual reality for playing, based on the Fortnite game and including Axe products. The metaverse itself is the advertisement, not only the products that are digitally placed. Thus, as users enter their website, they will find the disclosure of the advertising: *"The greatest advertisement you will ever play. Our legal team told us to write this."* This also confirms that the metaverse is the advertisement itself. Fortnite had also collaborations with Balenciaga [58], which led to Balenciaga branded clothes being available in Fortnite’s game.

Beauty-verses are going further and offer the opportunity to virtually try the products and check how they would look like on users’ avatar or even on the persons themselves, when the avatar is created by using their real physical characteristics. There are also metaverses designed to combine both the typical online shops with the experience of a real shop [51], meaning that users can not only try the products, but also buy them immediately if they wish to – for instance, Dior’s beauty-verse ‘Atelier of dreams’ [59], launched in 2021.

2.2.4.5 Metaverse version of out-of-home and digital-out-of-home advertising

The object of a metaverse advertising contract might also concern the typical out-of-home (OOH) and digital out-of-home (DOOH) advertising migrated into the metaverse. More specifically, it would imply the OOH and DOOH advertising, transposed in the virtual world, just as it would be displayed on the real streets, buildings and billboards. We deem that the distinction between OOH and DOOH will not be faded by the digital nature of the metaverse, as conceptually they will be perceived in the same way as in real life. Walking down the streets of the metaverse and seeing advertisement on static or digital billboards will only make it resemble better the real world.

The two types of traditional advertising would still be different in the metaverse, even if they are both digital. Conceptually, the OOH is static, simply displaying a content, while the digital OOH implies using digital billboards, with elements in motion, that might be as well recreated/simulated in the metaverse.

In the light of the above, in the context of a contract for OOH and DOOH advertising in the metaverse, the advertiser would pay for its advertisements to be displayed in the virtual world, similar to the physical world. He might opt for the same advertisements already existing or might create new ones adapted to the metaverse world. In contrast to a traditional contract for this type of advertising, contractually establishing the location of the

advertisements might not be that relevant. However, clauses related to the period of time for displaying the advertisements are still applicable.

2.2.4.6 Avatars: owning a branded-avatar or 'hiring' a computer-generated one

The advertising contract can also be based solely on creating an avatar that is emblematic enough in order to advertise the brand through its own appearance. For example, McDonalds has the possibility to enter the metaverse through their mascot, Ronald McDonald, as a brand-controlled avatar. In this case, every user in the metaverse would immediately recognize the brand and it might be even more interactive and thus effective than just displaying the McDonald's logo on a billboard or building. There are also many other relevant mascots and brands that could use the same strategy: Milka's cow, Walt Disney Company's Mickey Mouse, Cheetos' cheetah, Michelin's Michelin Man, and so on. Instead of static logos and advertisements, these would be 'living' avatars, wondering the metaverse and interacting with the consumers.

Not only mascots could be transformed into avatars, but also iconic figures related to brands. Seeing Karl Lagerfeld with his cat in the metaverse, Steve Jobs or Donatella Versace would definitely increase brand awareness among the users, as all of them are representative for their brands.

At first glance, one could say that these avatars do not imply a contract between the metaverse and the brand, as all the users are free to create their own avatars however they want. However, for making an avatar identical to a mascot, celebrity or public figure iconic for the brand, using merely the tools provided by the metaverse platform are not enough. This is more indisputable when it comes to re-creating mascots that do not have an anthropic form, while the metaverse provides tools only for creating human-shaped avatars. Such an avatar should be specially created upon the request of the brand. Having a contract in place also ensures the protection of any intellectual property right implied by the creation and digital display of the avatar.

Avatars used for advertising might not always be created by the brand or imitating a notorious person or logo associated with it. Nowadays brands can also opt for computer-generated avatars, that do not embed any sign linked to the brand, but they are means for a new form or targeted advertising [60] in the metaverse. This type of advertising can be done now through simulated digital people, products and activities [35]. An ordinary avatar from the metaverse could come to an user with a Coke in its hands and say how good it tastes, while another might come dressed in a Dior T-shirt, hug the user and ask him whether he/she have seen the latest and incredibly amazing SS collection from Dior. These could be bots or computer-generated avatars, created and used for advertising purposes. At the same time, real sales-men [35] could create avatars and join this new world full of potential buyers.

In case of computer-generated avatars, it is considered that even the avatar might be special generated just for a certain users [35] so it resembles a person that the user would have trust in, with physical details that are enjoyable to the user. Finally, these avatars could be the means for personalised advertising, especially if they are AI-generated [29], as their discussion and gestures with the user might be tailored based on the profile of the user as a consumer. They might use the exact triggering words and gestures in order to manipulate the user for making commercial decisions.

3 Legal framework applicable to metaverse advertising

When the idea of the metaverse was brought again in the spotlight, multiple questions about the applicable regulatory framework have arisen. The metaverse is not new [61], but it has been recently re-invented and even promoted as a new lawless world, where everything is possible. A world without rules, where one can express himself/herself however he/she wants, doing whatever he/she wants. No sanctions, no consequences, just a limitless getaway from the reality. But.. is this true? Is this new metaverse a lawless world?

The freedom specific to the metaverse has been mostly promoted in relation to the 'avatars', for the users that enter the metaverse and materialise their presence through a digital visual representation. For them, the idea of a ruleless world, where they can escape the real world's boundaries, is a great promise for marketing purposes, which indeed attracts them to join the digital environment. In a world where people use all kind of methods for running away from reality, being their true self is a nowadays a trend, discovering and expressing themselves beyond their family, job and materialistic aspects of life is the new goal of the modern world. The metaverse is promising all of these – everything people can't do in their daily life, they can do it there, in their own (virtual) terms (.. which should be compliant to the terms and conditions of the platform that owns the metaverse).

We deem that the metaverse is not so different from a regular video game. Users are provided with a virtual world (less or more similar to real life) and the possibility to create an avatar however they want it to be - they are not limited to their physical appearance, not even their genre, but they can use only the tools already existing on the platform for creating such an avatar. Then there are a (minimum) number of rules to abide. Now let's compare this with a videogame – users (players) can do in a videogame things they are not allowed in real life – murder, steal; even things not physically possible in real life, such as flying or fighting as a superhero – exactly what the metaverse promises. They can choose the 'avatar' to play with or even use VR technology to play a game. Why would the metaverse be so substantially different from the videogames?

If it is not real-life, then it is kind of a playing, and this is what human users generally do in a metaverse. They choose a role and they play it – they play with their avatar, with others' avatars and with the virtual world itself and everything it has to offer. Some metaverses are indeed meant to offer the possibility to explore real life places – a cheaper alternative to travelling, yet exploring the world (another goal of the modern society). Of course, there are also the metaverses that provide the possibility to learn and work. However, one can clearly notice how much the metaverse resembles a videogame. It is argued that the videogames are the precursors of the metaverse, laying its grounds [62]. It is also claimed that games like Second Life and Fortnite are actually early versions of the metaverses [63]. The metaverse is even described as being close to a multiplayer online game [64], and videogames are not outside of law. On the contrary, they are quite thorough regulated in all the world's jurisdictions.

As to the parties involved in the development of the metaverse, they are bind by at least all the rules applicable to videogames. These rules come also with significant differences depending on the users that are targeted to be attracted in the metaverse (special regulation apply for metaverses for children), data processing activities (which further implies data security and privacy [1]), type of intellectual property rights, activities to be conducted or available in the metaverse etc. We might not have already specific laws in place for regulating the metaverse, but the metaverse is not new and does not fully require a specific and particular legal framework.

The legal framework is nevertheless blurred when it comes to metaverses controlled by the users themselves in form of decentralised autonomous organisations [4], also known as

open metaverses, as it is almost impossible to identify the holders of the obligations and ultimately the responsible for any breach of law. From a data protection perspective the legal issues involved by metaverses are almost completely reduced in an open type because users are in control of their own data. However, when it comes IP rights, and in particular related infringements, it might be difficult to determine who precisely has the obligation to take down the illicit content [4].

As the existent legal provisions do apply to the metaverse, our research questions are: what are the legal obligations in terms of advertising in the metaverse? What are the legal implications for choosing to advertise in the metaverse and are there any features of the metaverse that might make it harder to comply with the legal framework? Are there any particularities of the metaverse that might trigger legal liability of not paying attention to make sure that the existing rules are being complied with?

3.1 General advertising rules

Advertising in the metaverse should comply with the general rules. It should always be legal, truthful [65] and it should exclude the use of subliminal techniques. When the avatar created and/or used for advertising purposes is AI-generated, European Union's proposed AI Regulation prohibits AI practices *'that have a significant potential to manipulate persons through subliminal techniques beyond their consciousness or exploit vulnerabilities of specific vulnerable groups'* [66]. Also, misleading and deceptive advertising is illicit in the European Union (EU), as well as in the United States of America. In the EU, it should comply with the Unfair commercial practices directive (Directive 2005/29/EC) and Directive on misleading and comparative advertising (Directive 2006/114/EC).

Since having multiple new technology booms, initially unregulated, it has become quite a standard practice to draft and implement code of conducts. In respect of self-regulations of the advertising industries, additional requirements are added. Advertising should be *'decent, honest and truthful and by doing so helps create consumer trust in advertising and in brands'* [67]. No distinction is made between advertising depending on the means for doing it, thus the same general soft rules should be also applied in the metaverse.

As advertising is meant to reach the consumers, the legal framework for consumer protection is also relevant to the metaverse advertising. At the same time, an important requirement generally applicable to advertisements is the disclosure of their commercial nature, in particular when it is not obvious or easy to be recognised, for instance in case of endorsements. We will further detail on the disclosure requirement separately in the subsection below.

Finally, the social and ethical norms applicable to online advertising are also fully compatible with the metaverse advertising. For advertising to succeed in the virtual world, the basic social and ethic norms must not only be taken into consideration, but thoroughly implemented. In order to have success with the brand awareness metaverse strategy, advertisers should respect the reason for which the consumers enter the metaverse. Whether it is learning, socializing, playing or traveling, the advertising content should not overcome the content that firstly attracted the consumer in the virtual world. In addition, the advertisers and the publishers should not only make sure that they keep a small percentage of advertising for not overriding the interests of the users, but they should also ensure that the way the advertising is used and interacted with does not affect users' reaching their objectives in the metaverse. What is more, the advertisers might even think about enhancing, through their advertising content, the experience, activities or interactions the consumers are seeking in the metaverse.

3.1.1 Disclosure of the commercial nature – a legal requirement

Both the publisher (owner of the metaverse) and the advertiser must comply with the disclosure requirements that are mandatory under the law, especially in the European Union and in the United States of America [68]. More specifically, ‘*clear and prominent disclosure is necessary to ensure that the average consumer is properly informed and not misled as to the commercial nature of a native or content ad*’ [69]. If in general the advertiser should ensure that the ad is marked as an ad, disclosing thus the commercial nature, this legal obligation should also be considered by the marketer when developing the metaverse or by the developer, when the marketer is only ordering its creation. The marketer or the developer are supposed to provide the adequate tools [32] for the advertiser to be able to comply with the disclosure requirements. At the same time, provided that the advertiser might use endorsers (such as metaverse influencers or computer-generated avatars), the publisher should ensure appropriate tools for disclosing their commercial purpose [32].

Even if in the online advertising industry complying with the disclosure requirements seems to be easy, as it only takes to mark the advertising content as an ad, in the metaverse this might raise some significant issues, depending on the features of the metaverse. This is why we are deeply in favour of a metaverse compliant both by design and by default with the legal framework applicable to advertising. The metaverse is a more interactive space and the built-in world might be extremely different from the one already existing. Items might be rotated 360 degrees, including logos, placed products and even avatars impersonating notorious brands’ mascots. Consequently, the developers of the metaverse must ensure that the disclosure is clearly seen, regardless the angle of perspective and/or the type of interactions with the ad. In a limitless space, if users are allowed to do anything (as some metaverses promise), then they might also be able to avoid the disclosure of an advertising content. Moreover, in the USA, the Federal Trade Commission proposes now that the disclosure must also be *clear and conspicuous* [70], which would imply a 360 degrees readable disclosure in the metaverse. The USA’s Federal Trade Commission has already made important steps for regulating the advertising in the metaverse, in a document named *Works on Guidelines for games and virtual reality*. Even the name of the document proves the great similarity between videogames and metaverses, both being ultimately nothing but virtual reality.

Native advertising is very much likely to exist in the metaverse, as it would be hard to distinguish between commercial content and non-commercial. This type of advertising is perfectly incorporated in the context or content where it is placed, making its commercial nature almost unnoticeable (e.g. a paid newspaper article for a beauty product, which does not disclose the commercial relation between the newspaper and the beauty brand). Native advertising could take the shape of display advertising [60] or even endorsements from the avatars. What is special about this type of advertising is that it blends perfectly in the surroundings so one could not identify as what it is – an advertisement. Native advertising is against the law, violating the rule of disclosing the commercial nature of an ad. Consequently, such advertising should not be permitted in the metaverse, but even prevented. A solution advanced in the past by International Advertising Bureau (IAB) Europe, suitable nowadays for the metaverse advertising, is putting in place visual demarcations, ‘*such as the use of different design by the publisher like shading, different fonts, outlines or borders*’ which ‘*should be used to help mark the content out as being different to other (...) content*’ [69].

3.1.2 Influencer marketing

As already discussed, influencer marketing is fully compatible with the metaverse and brands might combine influencer marketing with metaverse advertising in their future campaigns. At the moment, one could even assert that influencers are essential for convincing consumers to join the metaverse, where they can be 'fed' new types and forms of ads. As it will continue to be influencer marketing at root, the already existing legal frameworks remain applicable, together with the general advertising rules, regardless of being qualified as 'virtual influencer marketing'. This conclusion is also supported by the opinion released online by the Federal Trade Commission (FTC), in which it established that its guidelines on influencer marketing, performed until now outside the metaverse, are also applicable to virtual influencers [32].

However, it is also claimed that the current provisions are not enough, as influencer marketing might disclose an unforeseen potential in the metaverse, in the light of the newly AI-influencers. Consequently, there are academics and professionals in favour of enacting a new legal framework, applicable only to virtual influencers [71]. In this respect, our opinion is that such a legal framework would not be applicable to virtual influencers per se, as they cannot even be held liable for violations, but rather to the developers of such digital influencers of the advertisers who control/own them afterwards. Even if the avatars might be artificially intelligent, the computer code that stands behind them should comply with the legal framework, both by default (the computer code) and by design. Notwithstanding, there are also advantages in having a virtual influencer, as it can be programmed to perfectly perform the advertising contract, without any deviation/breaches.

3.2 Particular advertising rules

Besides the general advertising rules that are applicable to advertising in the metaverse, depending on the type of advertising, there are also special legal provisions that should be considered. For instance, when it comes to sponsorship with a marketing purpose, special legal frameworks are applicable - in the metaverse might be sponsored concerts, events, restaurants or even charity events, as these allow brands to consolidate their digital presence. In addition, depending on the type of advertised products and/or services, the related legal framework for their advertisement will still be mandatory to be complied with in the metaverse. This assertion is more evident when it comes to advertising alcohol, medicines, cigars, medical interventions, vaccines, diet supplements etc.

3.3 Non-applicable particular advertising rules: real-world advertising provisions

Not every legal provision generally regulating advertising is applicable in the metaverse. For example, Romanian Government Ordinance no. 43/1997 prohibits placing advertising billboards near street intersections, but this restriction is no longer justified in a metaverse, where there is no danger of causing real car accidents because of lack of visibility; the concept of lack of visibility can be definitely challenged in a virtual world. Another example of advertising regulation unjustified in the digital environment would be the ones prescribed in Romanian Law no. 51/1995 which establish strict rules for lawyers' advertising. For instance, if they choose to display the name of their law firm, the physical displaying support is mandatory to have a predetermined size, measured in centimetres. It is hard to imagine and also pointless to keep such restrictions in a virtual world, that might actually be completely different from the real world. Nevertheless, it is debatable whether lawyers are allowed to advertise themselves in these new digital words, as theoretically, Romanian Law no. 51/1995,

as amended, also imposes harsh restrictions on advertising methods and channels for lawyers. This is a situation about which one could argue that there is a legal vacuum in Romania's national law and a legislative future input is welcomed.

Another example of regulation applicable only to real-word and physical advertising would also be the local tax on advertising, payable to local authorities, and regulated by the Romanian Tax Code (Law no. 227/2015, as amended). This tax is due when there is DOOH or OOH advertising, located in public spaces or oriented towards them, so people standing in such places are able to see it, even if it is actually attached to a private building or any other private support.

Similarly, the enforcing regulations that apply to public institutions and/or authorities will also be unjustified in the metaverses, even if some of them might be built as real towns with city halls, police posts, universities, and so on. If in real life one will not see public authorities' inside and outside walls filled with ads, in the metaverse, the virtual representation of such institutions might be a suitable place for advertising – nothing precludes the publisher to design the metaverse as he/she wishes. This type of advertising rules related to the places available for advertising purposes are actually agreed contractually and dependent only on the parties' will and metaverses' technical configuration.

The conclusion is that we could actually narrow the regulations applicable to the metaverse advertising. As it is quite evident that the regulations strictly and directly related to the characteristics of traditional (physical/real word) advertising are unjustified in the metaverse, we could conclude that it can be applicable only the framework in place for online/digital advertising or compatible with this type of advertising.

3.4 Data processing in the metaverse

The metaverse represents either a replica of the real word or it goes beyond it, enhancing the real life possibilities. Users could just reproduce the common real activities (going to a concert, studying, shopping etc) or do even more in a world where the laws of physics do not apply. Maybe the concept of the metaverse is not new, but the high number of its users is. More users equal to more online activities digitally tracked, which means more data in the online metaverses [7]. This will also allow marketers to gather more data on the consumers, by analysing their behaviour in the metaverse [7]. It has been predicted that by 2026, a quarter of the world's population will spend minimum one hour per day in the metaverse [35] for activities like shopping, education, entertainment etc. If the 'usual' online tracking consisted of what people click on, how much time they spend on visualising a certain content, what they search online, and their commercial decision, in the metaverse many other activities can be tracked and recorded, such as what and how the work, how they interact with their friends, where they go, what they study etc. It is considered that even the emotional state of a person will be analysed, by processing the voice of the person and even the facial expressions [35], which subsequently implies processing biometric data [72]. Privacy is even more important in the metaverse as sometimes people behave there as they cannot in the real word, revealing maybe some of their deepest wishes, thoughts or intentions. The metaverse also represent the perfect environment for collecting data for neuromarketing purposes [73], especially when VR technology is used for entering it.

Metaverses and related technologies also contribute to datafication [74], by turning the users into numbers and values. The issue is that users are less aware of the amount of data collected and the entities rendering and harvesting data or inferences about them [74]. Data collection will focus on behavioural and biological aspects of the consumers' activity [75]. It is also claimed that in this new digital world, the companies '*will have the unprecedented ability to exploit the full potential of the data they collect*' [24].

The metaverse platforms opted for the same economic strategy as social media – generate revenues out of advertising. While they made the metaverses free for the users, so no fee has to be paid by individuals, they charge brands for advertising their products and services to the users. Consequently, the consumers and their attention become the product that is sold to the brands.

Advertising in the metaverse is closely linked to ‘*The Three M’s of the Metaverse: monitor, manipulate and monetize*’ [35]. The metaverse, when used for advertising purposes, might offer advanced-personalised advertising services for the advertisers, which entails different forms of advertising customised in accordance with users’ needs and commercial wishes. Considering the volume of data processed in the metaverse, the tailoring process is likely to become one of the most advanced ever. As previously explained, it might be a computer-generated avatar which chats with users and it adapts the speech to the profile of each consumer or simply arranging the OOH and DOOH advertising just for a particular user. When two different users would walk down the same street, they might see completely different advertisements, designed and displayed in accordance with their preferences. Also, it is already foreseen that users will be ‘*offered product selection based on their behaviours and reactions*’ [4], which is possible only after tracking and processing users’ activities for then delivering the promised results. The metaverse will imply data processing for it to be able to analyse and then highly personalise the virtual content [6]. Just as currently the online activity of consumers is being tracked, the digital fingerprints left behind in the metaverse will be as well processed for the purpose of targeted advertising [35]. Moreover, the experience of the metaverse itself is wished to be customized in the future for each user, and this is possible only by processing their data [76] and getting to know what each user wants. Worries are frequently expressed in relation to targeted ads in the metaverse, as it is deemed that they will skyrocket and can become very intrusive.

In the light of the above, both metaverse owners (publishers) and advertisers will have to comply with the data privacy regulations. In the European Union, they will have to abide by the provisions of the General Data Protection Regulation (Regulation EU 2016/279 - GDPR) when it comes to any personal data processing.

3.5 Intellectual Property Rights

The metaverse implies visual representation (models and designs) of products, trademarks and intellectual creative work, in particular original works of authorship. Consequently, the metaverse is filled with copyrighted works so it is also subject to intellectual property law, which protects the rights over *corpus mysticum* [24] that are to be found in the metaverse. The creators or owners of the metaverse must respect the intellectual property rights (IP rights) of the brands over their distinctive signs [24], which are popular and recognizable by the users, in particular trademarks, designs and models.

In general when it comes to advertising, IP rights are also involved and specific clauses are included in the advertising contracts for ensuring that these rights are accordingly protected. In addition, when ordering the creation of an avatar or a branded-metaverse, the right to use brand’s trademark should be granted to the creator. However, before entering the metaverse a brand should ensure that the protection of its IP rights [64] is also extended in the metaverse [33]. Nevertheless, even without joining a metaverse, it would be advisable for the global brands (and not only) to already take the steps to ensure the protection of their IP rights in the new virtual world. Brands that have already proceeded to secure their IP rights are Prada [77] and Gucci [78], who filed applications for protecting their trademarks in the metaverse [33].

From an IP rights perspective, counterfeit still represents a challenge as it will be difficult to assess whether a product is counterfeit or not in the metaverse. This would also mean that brands will have difficulties with tackling counterfeiting in the metaverse, in particular when it comes to phigital products. Such products can be qualified as branded goods for the purpose of enforcing the IP law [1] and preventing counterfeiting. However, it is also questionable who will be held liable for counterfeiting products. There is a notably difference between creating a counterfeit product in real life and creating it in the virtual world. The latest basically entails lines of computer code that can must read by a special programme for displaying the visual representation of the code. Such an example is the case of Hermes who sued an NFT creator for copying the model of their iconic Birkin bags and displaying them in the metaverse as ‘Metabirkins’.

Going beyond the already existing IP rights, activity in the metaverse might generate new ones as creating avatars, buildings and products also imply a creative and intellectual input from users or brands. In what concerns the content created by the users, the property over the generated IP rights is settled by the terms and conditions for joining the metaverse.

3.6 Video-games legal framework

In a previous section of this paper we came to the conclusion that a metaverse resembles videogames a lot. Consequently, the law applicable to videogames could also apply to the metaverse, depending of course on its type, services and features [4] - for example, a workspace cannot be considered [79] a videogame, but metaverses such as Horizon Worlds [80], Somnium Space [81] and Decentraland might fall under video games’ legal framework.

3.7 Legal provisions applicable to online and platform activities

In the European Union, the metaverse can be qualified as an information society service, that provides digital content and services, triggering thus the applicability of EU’s *Directive on electronic commerce* (Directive 2000/31/EC) and *Directive on certain aspects concerning contracts for the supply of digital content and digital services* (Directive EU 2019/770). Furthermore, also in the EU, metaverses fall under the provisions of the *Digital Services Act* (DSA), which amended the *Directive on electronic commerce*, and *Digital Markets Act* [82] (DMA), even if neither of them addresses directly the topic of virtual reality [4]. Finally, as it might act as a marketplace or intermediate in any other way the provision of services and products of the brands to the consumers, it might also be subject to the provisions of EU’s *Regulation on promoting fairness and transparency for business users of online intermediation services* (Regulation EU 2019/1150).

Directive on electronic commerce, amended by DSA, compels the metaverse providers to inform users about their identity, address (physical and electronic mail address) and whether they are registered in a trade or any similar register. This Directive also imposes the obligation of disclosure (already discussed in a previous section), as metaverse providers should ensure that the commercial communications which are part of or constitutes their service are clearly identifiable as such and also point to the person on whose behalf the communication is made.

Directive on certain aspects concerning contracts for the supply of digital content and digital services will only be applicable for the metaverses for which the consumers will pay for joining. Such an example is at the moment World Horizons, as it is predicted to charge users in the future. Under this Directive, the provider of the metaverse has the obligation to deliver digital services and content that: (i) are fit to the purposes to which they would be

normally used; and (ii) possess the qualities and performance features, including in relation to functionality compatibility, accessibility, continuity and security, normal for digital content or digital services of the same type and which the consumer may reasonably expect, given the nature of the digital content or digital service.

The DSA obliges metaverse providers to have in place procedures for taking down the illicit content and acting accordingly if the case. The providers are also compelled to collaborate with national authorities when required, as well as to transmit them the requested information when certain conditions are met. DSA also tangentially handles the subject of terms and conditions and their content, providers of metaverses being obliged to include in the contractual clauses '*information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service*'. They are also supposed to inform the users about their internal system for receiving and solving complaints, as well as about the rules of procedure to be followed in case of breaching the restrictions or decisions made by platforms that are considered to be abusive.

The DMA regulates in particular gatekeepers, defined as those platforms that provide a 'core service' and have (i) a size that impacts the internal market; (ii) the control of an important gateway for business users towards final consumers; and (iii) an entrenched and durable position [82]. The applicability of the DMA in the industry of metaverses is a certainty as even the European Parliament acknowledged the possibility of having the metaverse landscape 'dominated by a few big companies' [4]. Meta with its Horizons World is expected to become soon a gatekeeper in the industry.

The metaverses business will provide some companies with the opportunity 'to monopolise digital markets' [4]. When a metaverse will start to do so (which implies attracting more than a significant percentage of users), the owner/vendor of the metaverse will control every business having access to the metaverse - one of the largest virtual environments with one of the highest numbers of consumers. This will once again lead to challenges in terms of competition between the businesses that want to enter the metaverse and depend on the decision of the gatekeeper. In case of not accessing the metaverse, they will have a disadvantage on the market from the start, compared to the brands that entered the virtual world. In the DMA there are also obligations imposed on gatekeepers related to data processing, which might be extremely relevant in the context of the metaverse and related advertising activity. One of them, enshrined in Article 5, is to not mix the personal data collected from core platform services with data from other gatekeepers or third-party services, as well as to not sign up the users to any other service without their consent. Now that metaverses might not be exclusively developed by a single entity and as they started to integrate third party solutions [34], these require more actions and precautions from the metaverse owners. A relevant example is the situation when there is a different provider for the avatars: the metaverse developers create only the metaverse, while the tools for creating the avatars and storing them are offered by a third party; in this case, an avatar can be used in multiple metaverses, all owned by different entities which have the same provider of avatars. Also, creating a metaverse for online shopping (like an online mall), might imply integrating third-party services.

Finally, under the *Regulation on promoting fairness and transparency for business users of online intermediation services*, if the users of the metaverse will be able to search for products and/or services, even virtual influencers or mascots, then the platform should provide an explanatory note on the criteria used by the algorithm behind the search results, in particular for the hierarchy that was displayed to the user.

3.8 Avatars: legal issues

The avatars in the metaverse give space for the right of publicity to be infringed. The right of publicity is an intellectual property right [83], which provides celebrities protection against unauthorised commercial use of any references to them [84], such as name, photos, voice, pseudonym, and likeness [84]. The right of publicity comes from the American Law where it is considered an ‘*appropriation of the commercial value of a person’s identity*’, in accordance with the *Restatement (Third) of Unfair Competition* [85]. The idea behind granting and protecting this right is to not let people who have not contributed to the success and work of the celebrity to benefit from it [86]. In some jurisdictions, it is not necessary for the celebrities to have previously commercialised their identity in order to enforce the right of publicity (in Japan for example [87]). In others, this right might also be protected after one’s death, meaning that brands cannot use familiar figures that passed away for attracting the consumers, without having contractual permission to do so (e.g. a brand could not create an Elvis Presley avatar in the metaverse without being allowed to). In the USA, it is recognised ‘*a related statutory right to protection against false endorsement, association, or affiliation*’ [84].

If such a right has been assigned to artist managers (like actors and singers do), then they might exercise the rights and also ask for compensation in case of violations. The right to publicity is for protection purposes too, as it shields consumers from ‘deceptive trade practices’ [86].

As avatars could impersonate celebrities, and their name and appearance have a financial value/pecuniary worth [85], the controllers and/or creators of such avatars would benefit from the publicly value of celebrities, which is mainly based on their fame [5]. This might happen by simply creating an avatar which resembles to the celebrity, without asking for any permission. In the metaverse, infringing the right to publicity could also imply merely the use of voice or even significant physical similarity [25] (it is not required for the avatar to be a perfect replica).

However, the right of publicity is not absolute and does not outweigh freedom of expression. Consequently, even in the metaverse, the name and/or image of a celebrity could be used if for example the metaverse simulates the availability of news channels on TVs or simply transmits audio-video news from the real world. In this context, displaying celebrities on the TV without a prior consent is licit as long as it is not used for endorsement and advertising purposes [88]. In this situation, it can be argued that as the metaverse aims to simulate as accurate as possible the real-life, and daily life implies such news on the TV, then the news that show celebrities can also be displayed in the metaverse without infringing the right of publicity. This example falls under the doctrine of fair use [89], which allows for references to a celebrity to be used in particular cases [90] in order to balance the right of publicity with other competitive interests [90].

When an avatar of the celebrity already exists lawfully in the metaverse, creating a second similar one without permission implies the act of duplicating the avatar [4]. As the duplicate infringes the right of publicity and it could be proven that such an avatar has already existed, it is questionable whether the duplicated avatar can be qualified as illicit content and thus taken down by the metaverse according to their internal procedure, without addressing the issue in the court. We consider that such regulations applicable in case of duplicating avatars or infringing rights might also be included in the terms and conditions of the metaverse, so duplicating an avatar would result in a serious breach of contract, sanctioned accordingly by the metaverse. Metaverse providers should take into account that whenever it comes to illicit content, if they fall under the provisions of the DSA, then they are supposed to have in place a procedure for taking it down and also for filing related complaints.

Duplicating an avatar or infringing the right of publicity might also result in a virtual theft of identity [4], which could further negatively impact the advertising in the metaverse. If an avatar resembles a celebrity or a mascot of a brand and behaves in an inappropriate manner, this would further affect brands' image and make it less desirable in the metaverse. Of course, further questions arise in case the avatar is infringing rules of the digital community or even breaking the real-world laws which continue to apply in the metaverse [91].

4 Contractual clauses for services in the metaverse. Case study: Shiseido's beauty-verse and its avatars

Shiseido is one of the latest beauty brands who took advantage of the concept of metaverse and integrated it in its marketing campaign. The result of combining Shiseido with the metaverse is the beauty-verse [92] - the metaverse used by a beauty brand.

Shiseido's metaverse implies a co-branding contract with the brand Douglas, the collaboration between these two brands being also publicly announced by Douglas on social media [93] and also by the CEO of Douglas Romania: 'Tokyo #Beauty-verse is a virtual world where you can create your own avatar and start exploring the city, find Shiseido building and discover many surprises.' [94]



Fig. 1. Screenshot from the Shiseido beauty-verse (10.01.2023).

Their metaverse is different depending on the region of the world where it is used or entered into. In the Asian region, the main characteristic of the metaverse is the resemblance of a part of the beauty-verse to a videogame, in which customers might play games with Shiseido products. It is needless to say that brand identity can be recognized in the entire virtual environment, not only on the products. If in the real world one could see the name of the brand only on its products (and on physical or online advertising), in the beauty-verse Shiseido's name and trademark can be spotted everywhere 'around'. Its advertising metaverse is, as expected, filled with advertising – from billboards to 3D products, stores and the brand being shown almost everywhere possible [95].

For the European region, customers can find virtual beauty-advisors, which will help them to choose the products that suit best their skin, and will even provide the opportunity to

virtually try them. The possibility to test the products is one of the first ideas that Shiseido came with in the metaverse world when they started their new metaverse-based marketing journey. In general, the beauty-verse aims to provide as many real-life experiences in the metaverse as possible, including beauty seminars and advice [6].

The Shiseido beauty-verse experience starts as any other typical metaverse journey – concluding a contract that takes the form of ‘terms and conditions’ and creating the avatar for navigating the virtual world. For using the metaverse, there is granted a license (non-exclusive, free, non-transferable and non-sublicensable).

The metaverse’s terms and conditions have at least the typical contractual clauses for the use of an online platform, as follows: the ‘as is’ clause, (un)availability of the site, acceptable use policy, limitation of liability for accuracy/omission of information, exclusion of obligation to update the information, the right to unilaterally modify the content of the site without any prior notice, and many waivers of liability related to the access to the platform and its use (*e.g.* no liability for not being able to access the website).

By entering into this contract, the consumers become users within the beauty-verse, meaning that any content they generate in this virtual world, would be classified as ‘user-generated content’. Over the avatar users created for Shiseido’s beauty-verse, they retain no IP rights, as there are set forth clauses for assignment of the IP rights over the avatar. These clauses are included in the context of the acknowledgement that users’ creation might be qualified as intellectual/creative work, protected by the applicable legal framework. The users assign the right of use without any limitation and they also agree with waiving any right to remuneration and/or compensation.

Not always creating an account and entering the digital beauty-world is based on free will. As discussed in a previous section, influencer marketing might go hand in hand with the metaverse. Even Shiseido opted for this combination, especially for advertising the existence of their beauty-verse and convincing the consumers to try it. Consequently, for some persons, concluding the contract for entering the beauty-verse might come up as a contractual obligation, included in the advertising contract. Almost all the influencers used by Shiseido have been provided with gifts (the so-called ‘freebies’), made of Shiseido products, and required to create an avatar. The entire process of joining the beauty-verse was supposed to be posted for their followers, so they will be attracted by the idea and follow their example. Basically, traditional influencers have now the job to influence consumers to enter the beauty-verse.

When it comes to entering the metaverse following a contractual obligation, we deem that there might be a conflict between the terms that are put forward based on the free will of the user and the advertising contract between Shiseido and the influencer, given that the influencer might have not been priorly provided with the terms and conditions of the beauty-verse.

What is even more specific about Shiseido’s beauty-verse, is that a third’s party services are used for creating the avatar. Shiseido avoids costs for developing another part of the software in charge with creation of the avatars. This outsourcing also contribute to the interoperability of the metaverses (someone who already has an avatar created on the platform of the same service provider, could instantly export it in the beauty-verse and use it, without creating a new one). As the beauty-verse could be entered only through an avatar, users are literally ‘obliged’ to also agree with the terms and conditions of the third-party services provider. These terms and conditions involve clauses on data privacy, IP rights, legal treatment of user-generated content, waiver of rights, and limitation of liabilities. The avatar created by the users is qualified as intellectual work, protected by intellectual property laws. It might be also created based on a selfie of the person (Art. 1.1 of End-user Terms of Use for Ready Player Me [96]) and the service provider has the right to keep the avatar in its

without going into specific details. New legal challenges are already emerging in what concerns consumer protection, children advertising and competition (for example, in case a metaverse that is also a potential gatekeeper decides to prohibit the avatars to wear anything but Nike shoes [76], provided that it is not a Nike-owned or controlled metaverse). Personal data protection is a fragile legal land over which the developers and owners of the metaverse seem to walk without caring. As always, legislators do not keep pace with technological advances in the field, but it cannot be claimed that there is an absolute legislative vacuum. As we have shown in the paper, the existing legal framework is applicable to the metaverse.

The world of the metaverse is, at the moment, a never-ending developing one, as new technologies are incorporated and users' experience keeps on being improved. AI is also already predicted to be integrated and used even for advertising purposes, in particular for targeted advertising. Whether there will be an AI-generated avatar [98] who will have tailored conversations with the consumers or simply any other type of advertising content AI-generated, this new technology will change entirely the online advertising, especially in the metaverse. AI could definitely assist with personalised recommendations and improve the immersion of the consumer [99], consequently enhancing the potential of immersive advertising.

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