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Luxury brands enter 2022 with new tech and legal tacks

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As the world approaches the two-year mark since the beginning of the COVID-19 crisis, the luxury goods industry continues to evolve in response to unprecedented disruptions in the economy that have shaped the start of the decade.

The recent annual McKinsey & Co. report, *The State of Fashion 2022*, outlines major trends that the industry will face in 2021 and suggests strategies to deal with them.

The report notes that global fashion sales are recovering and are projected to reach 103-108 percent of 2019 levels.

New technologies lead the way, and legal strategies surrounding these trends must be developed so that players in the luxury goods industry remain strong and protected in 2022.

NFTs and the metaverse

The digital world expanded even further in 2021 with the explosion of NFTs. These totally digital assets offer creators and consumers a new way to interact in the virtual world.

The McKinsey report notes that tech-savvy Gen Z and millennials are spending more time online than ever before, and that engagement has led brands to elevate their involvement in the emerging "metaverse" in new ways.

Luxury brands have partnered with gaming companies to create collaborative virtual fashion, allowing gamers to dress their avatars in, for example, the same Balenciaga sweatshirt that they may be wearing.

Various brands are creating unique crypto assets with NFTs that can be sold and exchanged online, generating significant interest and revenue streams.

From the legal side, brands should keep in mind that whenever intellectual property is involved, precautions need to be set in place, up-front, to ensure that their IP stays protected.

Although NFTs offer unmatched authentication on the blockchain, rogue "minters" can still create fraudulent NFTs

incorporating protected trademarks.

Additionally, collaborations with third-parties must be carefully crafted to prevent the misuse of intellectual property in the digital realm.

Because NFT value is still volatile, brands should approach with some caution, but should keep an eye on possible advantages of the new technologies.

Product passports

Along with NFTs and blockchain security, brands are seeking other methods to authenticate their real-world products.

The McKinsey report notes that brands are investing heavily in product passports which, in addition to being a valuable tool in combating counterfeiting, allow consumers to authenticate their items and learn details about a product's materials, where and how it was made, and the working conditions of the manufacture, thereby boosting authentication, transparency, and sustainability.

Consumers will be able to purchase products from online retailers with the assurance that they can scan a QR code or RFID chip to connect directly with the brand and build trust.

As the resale business grows, and the financial barriers to using such technology diminish, brands should consider product passports as a possible advantage in the luxury goods economy.

From the legal side, scaling, standardization and compatibility should be top priorities when crafting agreements with partners and other brands to coalesce around common standards and terms.

In an otherwise competitive marketplace, cooperation among brands on this front is vitally important to keep at pace with innovation and to succeed in shared goals of enhancing consumer trust and fighting counterfeiters.

Cyber resilience

Unfortunately, but unsurprisingly, as the focus on a digital presence grows, the threat of cyber-attacks grows with it.

The McKinsey report notes that online and in-store technology and consumer data is more at risk than ever, and brands must do their due diligence in protecting their IP as well as their consumers' personal information.

The report also notes that the first step in cyber-security may be as simple as strengthening passwords and improving defenses against phishing scams.

However, to stay proactive against these cyber-security threats, many brands may choose to partner with IP legal counsel to determine what its most important IP assets are and then how to secure them.

At the same time IP due diligence is being conducted in connection with cyber-security, that same due diligence will be advantageous in disclosing (1) what is the inventory of intellectual property of the company, both in existence and still in pendency; (2) whether the IP protection strategy adequately fits the needs of the business; and (3) what efforts are being made to enforce IP rights.

Online accessibility

Since COVID-19 changed the face of retail and moved a significant portion of the business online, brand Web sites have become the face of the company.

In 2022, the legal world will continue to see lawsuits and demands relating to Web accessibility violations under the Americans with Disabilities Act.

Brands should be proactive in making their sites and mobile apps accessible and maintaining that accessibility, with the ultimate goal of "accessibility by design" rather than by remediation.

Companies should also regularly use automated and human testing to check the status of their site and be wary of using "overlays" as instant solutions to accessibility issues.

Retention of talent

In 2021, various industries saw mass resignations at all levels, and as noted in the McKinsey report, the fashion industry must now compete even more with other sectors to retain talent that may seek greener pastures with more flexible, diverse and personally valuable workplaces.

With the growth of an online presence, companies have struggled to fill roles, such as analysts or data scientists, reflecting a brands' increasing emphasis on big data.

From a legal perspective, the heightened turnover of employees means that company data is more at risk.

Trade secrets are vital pieces of intellectual property, so brands should ensure that when new talent arrives and when it leaves, the paperwork includes contractual provisions that discourage infringement and protect the company from wrongdoing.

THE WORLD enters 2022 with a pandemic still raging, but the luxury goods industry is finding its footing in new and evolving markets, with developing technology shaping that journey.

Knowledge of the road ahead will lend itself well, and luxury brands should endeavor to explore the legal strategies to best equip themselves for what 2022 has in store.

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