# ARE Trademark Law Alert: Metabirkins NFTs Found to Infringe Hermès' Trademark Rights

Author(s): Charles R. Macedo, Max Vern , David P. Goldberg,

Earlier today, a federal jury held artist Mason Rothschild liable to Hermès International for trademark infringement, trademark dilution, and cybersquatting based on Rothschild's creation and online sale of the Metabirkins series of non-fungible tokens ("Metabirkins NFTs"). *See Hermès International v. Rothschild*, No. 22-CV-00384 (SDNY filed Mar. 2, 2022).

As we previously reported, Hermès alleged in its complaint that the Metabirkins NFTs infringe its trademark rights in its popular Birkin bags and hamper its ability to market the bags online. Rothschild countered that his NFTs were artwork protected by the First Amendment and that trademark law should not give Hermès control over his art.

The jury's award of $133,000 is a win for Hermès. That said, there is a good chance that Rothschild will file post-trial motions and/or an appeal. We will continue to follow and report on this case and other trademark matters in the federal courts that may affect our clients. If you have questions about how this jury verdict may impact your rights, please feel free to contact us.

*Charles R. Macedo and Max Vern are partners and David P. Goldberg is an associate at Amster, Rothstein & Ebenstein LLP. Their practices specialize in all aspects of intellectual property law, including trademarks, copyrights and patents. They can be reached at cmacedo@arelaw.com , mvern@arelaw.com and dgoldberg@arelaw.com respectively.*


© Copyright Amster, Rothstein & Ebenstien LLP. All rights reserved.