

APPAREL AND ACCESSORIES

Herms declares victory in landmark digital copyright lawsuit

February 8, 2023



Mr. Rothschild created and sold several (NFTs) that Herms argued violated the trademark of the brand's Birkin bag. Image credit: Open Sea/Mason Rothschild

By LUXURY DAILY NEWS SERVICE

French fashion house **Herms** has been awarded \$133,000 in damages and a declaration of victory in its copyright lawsuit against digital artist Mason Rothschild.

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Mr. Rothschild created and sold several non-fungible tokens (NFTs) that Herms argued violated the trademark of the brand's Birkin bag. A nine-person federal jury in Manhattan declared on Feb. 8 that Mr. Rothschild's works were not protected under the First Amendment to the U.S. Constitution, which safeguards free speech.

Breaking ground

Herms' case is the first to examine how NFTs should be considered in relation to the laws of intellectual property.

Mr. Rothschild made several digital incarnations of the Birkin bag in a project he named "MetaBirkins." One such rendering appeared to be carrying a human fetus.



A rainbow wall of Birkins at Rebag's Los Angeles boutique. Image credit: Uncover LA

Another rendering featured several emojis, while another was covered in green fur.

These were among a total of 100 MetaBirkins that were presented as part of Miami's Art Basel in December of 2021.

Mr. Rothschild's position appeared to be that his creations served as cultural commentary and were therefore protected under the First Amendment.

Two other major fashion labels went to court over copyright infringement recently, as last month, U.S. fashion label Thom Browne was declared the victor in a case against Adidas ([see story](#)).

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