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The Rise of Virtual Talent

BY FRANCES BANDAS / ON MARCH 7, 2023

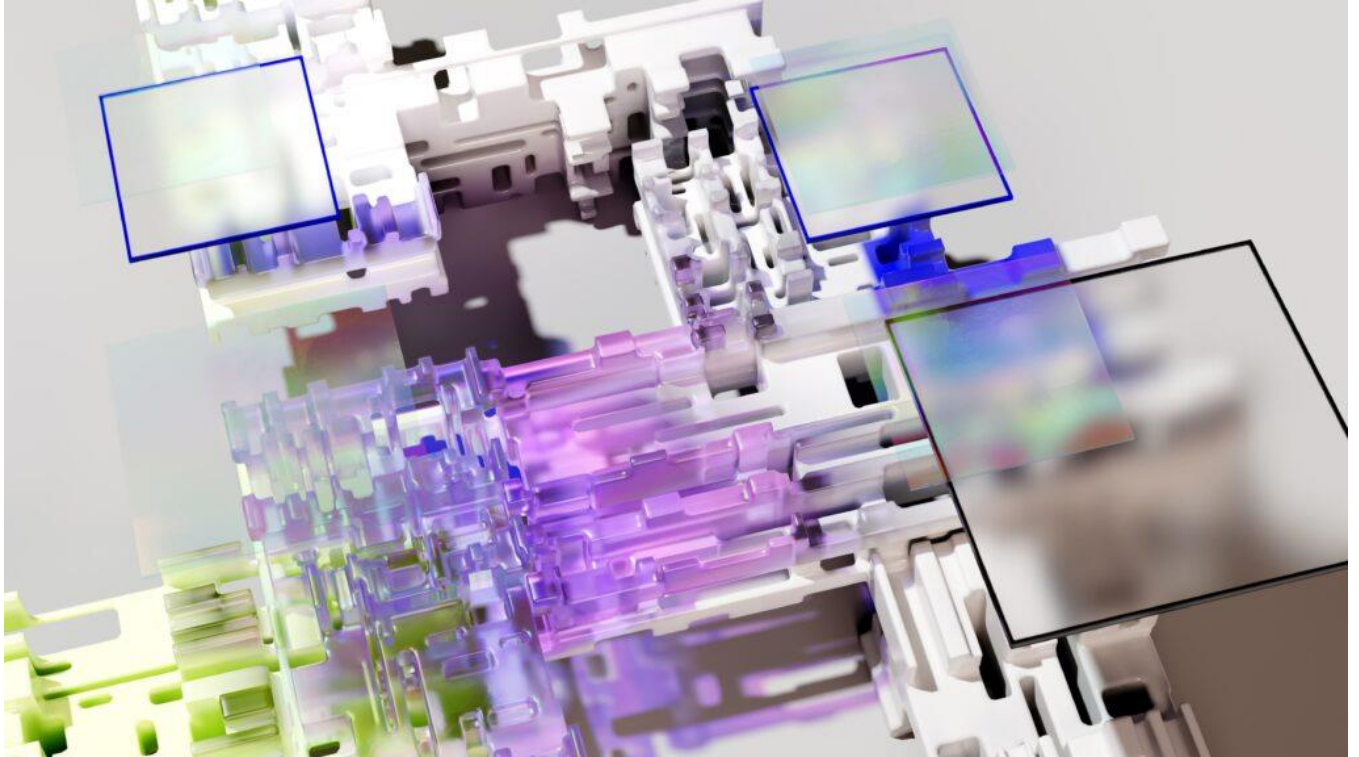


Photo by DeepMind on Unsplash

As web3 and the metaverse expand, casting horizons have broadened to allow virtual talent to participate in the fashion and entertainment industries.¹

The use of digital avatars in the fashion industry, for one, is reported to be “all the rage.”² A case in point: the fashion industry ushered in its first Metaverse Fashion Week (“MVFW”) in March of last year.³ Tommy Hilfiger, Etro, Selfridges, Dolce & Gabbana, Guo Pei, and Paco Rabanne, among other brands, participated in the launch.⁴ The second annual MVFW is scheduled to return in March of this year, promising events that include runway shows, exclusive wearable collections, 3D augmented reality web experiences, pop-up stores, and the introduction of MVFW’s first official virtual supermodel.⁵ Some modeling agencies have even begun to expand their portfolios to include virtual versions of real-life models. Agency Elite World Group (“Elite”), for instance, recently utilized third-party scanning technology to develop model avatars pronounced to be “as much a copy of the real person as possible in terms of figure, hair color and complexion.”⁶ Elite CEO Paolo Barbieri remarked to *Women’s Wear Daily* that this technology could “allow people to do two jobs at once, one in the real world and another in the metaverse, or to move virtually, reducing the cost and environmental impact of travel.”⁷

Meanwhile, in South Korea, K-Pop performers have begun to venture into the metaverse.⁸ Operating on the digital cutting edge has “been a hallmark of Korean pop culture for a generation,” but the Korean government has recently invested more than \$170 million in support of a “metaverse alliance” geared towards the development of metaverse technology.⁹ Already, Korean virtual influencers “promote very real brands” and boast very real followings.¹⁰

China displays similar rates of metaverse industry growth—its “virtual influencer industry was estimated to be worth \$960 million” by 2021 and is predicted to surpass \$42 billion by 2030.¹¹ However, the trend is not merely limited to China and South Korea.¹² American virtual Instagram influencer Lil Miquela “emerged as early as 2016,” and counterparts are being increasingly introduced.¹³ Italian luxury brand Prada brought the trend in-house, developing its own virtual model for a perfume campaign.¹⁴

The use of virtual talent allows a brand to tailor “their muse’s personality, looks and values to perfectly mirror the product and the desired customers.”¹⁵ Moreover, working with virtual talent circumvents the human risk associated with endorsement—celebrity scandal is all but impossible where the talent has no autonomous personality.¹⁶ That said, the use of virtual talent is not without its shortcomings. Virtual influencers have been accused of appearing “anodyne, unspontaneous or inauthentic compared to human models and muses.”¹⁷ Joined with complaints that the use of such talent suggests “a dystopian future for the fashion industry,” the practice may face resistance from market forces.¹⁸

The legal landscape is evolving to address this emerging industry. Using a real person’s likeness to build an avatar-for-hire raises questions of rights and revenue ownership—a complication which at least one modeling agency is navigating by retaining rights ownership while sharing revenue with the individuals whose likenesses the avatars are based on.¹⁹ As web3 and the metaverse continue to expand, acknowledgment of and further clarity regarding such challenges is inevitable.²⁰

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1. “Web3” is a term used to denote a decentralized, third era internet built on blockchain technology, while “metaverse” is a term used to denote a virtual, interactive world populated by user avatars. See Bernard Marr, The

- Important Difference Between Web3 and The Metaverse, Forbes (Feb. 22, 2022), <https://www.forbes.com/sites/bernardmarr/2022/02/22/the-important-difference-between-web3-and-the-metaverse/?sh=2704625c5af3> [<https://perma.cc/8ELH-E6MZ>].
2. Luisa Zargani, Elite World Group Partners With Igoodi to Create 3D Avatars of Models, Women's Wear Daily (Sept. 19, 2022, 11:05 AM), <https://wwd.com/fashion-news/fashion-scoops/a-virtual-kendall-jenner-elite-world-group-partners-igoodi-3d-avatars-of-models-1235339275/> [<https://perma.cc/H45P-WQHP>].
 3. Lisa Lockwood, Metaverse Fashion Week Returns in March, Women's Wear Daily (Dec. 6, 2022, 1:00 AM), <https://wwd.com/fashion-news/fashion-features/metaverse-fashion-week-returns-march-28-1235438303/> [<https://perma.cc/22DB-QUNP>].
 4. Deborah Belgum, BCBGMaxAzria to Present Its Recent Collaboration With Stylist Maeve Reilly on a Metaverse Runway, Women's Wear Daily (Feb. 9, 2023, 11:59 AM), <https://wwd.com/fashion-news/fashion-features/bcbgmaxazria-maeve-reilly-metaverse-runway-fashion-show-1235512777/> [<https://perma.cc/9KNJ-VKJS>].
 5. Lockwood, *supra* note 3.
 6. Zargani, *supra* note 2.
 7. *Id.*
 8. Jin Yu Young & Matt Stevens, Will the Metaverse Be Entertaining? Ask South Korea., N.Y. Times (Jan. 29, 2023), <https://www.nytimes.com/2023/01/29/business/metaverse-k-pop-south-korea.html> [<https://perma.cc/LF9X-ME7U>].
 9. *Id.*
 10. *Id.*
 11. Gemma A. Williams, Should Brands Use Virtual Influencers in China?, Bus. of Fashion (Feb. 14, 2023), <https://www.businessoffashion.com/briefings/china/should-brands-use-virtual-influencers-in-china/> [<https://perma.cc/8G6X-HCJD>].
 12. *Id.*
 13. Linnéa Pesonen, How Prada Candy and Its Digital Muse Is Changing the Fashion and Beauty Landscape, Vogue Scandinavia (May 23, 2022), <https://www.voguescandinavia.com/articles/how-prada-candy-and-its-digital-muse-is-changing-the-fashion-and-beauty-landscape> [<https://perma.cc/2FK3-GDGZ>].
 14. *Id.*
 15. *Id.*
 16. Williams, *supra* note 11.
 17. *Id.*

18.Id.

19. Adriana Lee, *The Rise of the Digital Fashion Model*, *Women's Wear Daily* (Sept. 16, 2022), <https://wwd.com/business-news/technology/rise-of-digital-fashion-model-photogenics-1235335875/> [<https://perma.cc/DF3Q-LNES>]. See also Matthew Savare, *Exploring Publicity Rights for Virtual Avatars*, *Law360* (Oct. 3, 2022), <https://www.law360.com/articles/1535279/exploring-publicity-rights-for-virtual-avatars> [<https://perma.cc/9WRC-QB3S>] (contemplating whether a right of publicity should be available to an avatar which does not resemble a natural person but instead develops its own cognizable identity).

20. Savare, *supra* note 19.