

PBRS IN THE EMERGING WORLD OF BLOCKCHAIN, METaverse AND NFTS

NFTs, blockchain and metaverse are the flavours of the moment. But what are they? Do they have an impact on the real world? And above all, are they bound to have an impact on any sort of IP rights, including PBRS?



NFT (Non-Fungible Token) is the combination of a number known as the token ID and a contact address.

Good questions, indeed. Quite complicated to answer such good questions with good answers. Before going into details, we have to start from the basics:

- **Blockchain** is a system in which a record of transactions made in cryptocurrency is maintained across several computers linked in a peer-to-peer network.

- **NFT (Non-Fungible Token)** is the combination of a number known as the token ID and a contact address. As the largest majority of commentators on NFT stated, at its very core, an NFT is “those two numbers,” and it creates digital scarcity.

- **The metaverse** is a virtual-reality space where users can interact with computer-generated environments and other users.

All the above has nothing in common with the natural world, i.e., the milieu where the horticultural industry is working. Despite this phenomenon, it is partially true that denying the impact of the virtual world on the ordinary one, including the horticultural and agri-food industries, would be wrong. Let's see why.

RECIPROCITY AND MUTUAL TRUST
As far as blockchain is concerned, the technology developed to create a parallel system of transactions where people are connected in a network based on reciprocity and mutual trust might be useful also for different aims. This includes the datation of facts such as the development of a new variety.

In a nutshell: as soon as a breeder reaches the goal of the research

efforts deployed through decades, the need to protect against third parties' interference turns into an 'urgent emergency'.

Blockchain could be useful not as a substitute for the application for a patent - or other kinds of IP rights related to plant varieties - but as a means to give a date, to 'make a point'.

As long as blockchain is used exclusively as a sort of closet where keeping secrets about your new varieties, including the genetics related to the latter, without giving the market/ potential partners access to such information, it is very useful in order to prove the priority of the invention in case of parallel development of new varieties.

Furthermore, it might be very

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useful to defend your own right to get the proper patent against unfair competitors trying to steal the outcome of long-period R&D investments.

As said, blockchain is useful as long as it is a way to keep secret, confidential the outcome of your research. No means that it can be a substitute for a traditional patent application. Investing time and money in building and managing an IP portfolio is the best way to carry on an innovation-driven business, even in the virtual era we are living in.

MISUSE

Innovation is neither good nor bad; the way mankind deploys it could be either the one or the other.

A misuse of blockchain could lead to pre-divulgence. For instance, creating and offering for sale NFTs corresponding to a new plant variety is very likely to amount to a pre-divulgence of the variety itself, thus preventing the breeder from being granted a patent.

To make a long story short, NFTs are nothing but a way to launch in the market – although a virtual one – a product. In other words, if the outcome of your research is

disclosed publicly through an NFT, your research could not lead to a patent.

OPENING NEW BUSINESS OPPORTUNITIES

On the contrary, using the technology properly at issue might open new business opportunities for the horticultural industry.

As a matter of fact, selling NFTs of flowers and plants – including those varieties protected by patents – to customers interested in throwing (or attending) parties, hosting (or attending) events in the metaverse is very likely to be a scenario to cope with in years to come.

The trend is very strong for the food industry, particularly for top-class range and luxury products, but it is very likely to be a sort of waive to hit even the mainstream range of products very soon.

HANDLING A BACK-AND-FORTH DIALECTIC RELATIONSHIP BETWEEN VIRTUAL AND REAL

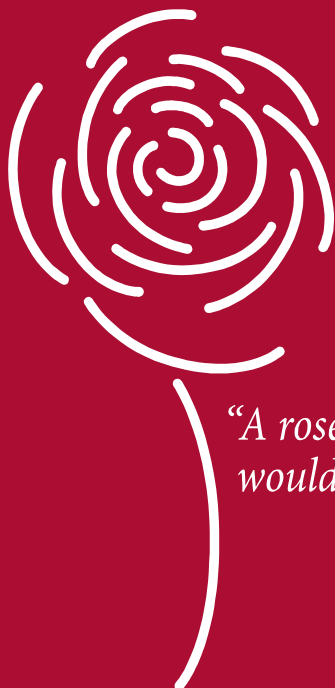
The metaverse is built as a sort of cast copying of the ordinary world we are living in. The real people tasting the virtual life in the metaverse are seeking an environment as close as possible to

the real one, letting their avatars experience the virtual version of their lives. And flowers and plants make no exception; any location, including virtual ones, to host an event must be decorated, and hence flowers are an essential part of such decoration.

Defending an IP portfolio and a company or brand reputation means handling a back-and-forth dialectic relationship between virtual and real.

QUICK FACTS

Emanuela Truffo is partner at Studio Legale Jacobacci & Associati. Emanuela specialises in contentious and non-contentious Intellectual Property matters and commercial litigation across a wide range of local and international practices. She has developed expertise in negotiation and drafting of agreements such as license, non-disclosure, non-compete and co-existence agreements concerning IP rights and copyright as well as for commercial transactions.



*“A rose by any other name
would smell as sweet”*

No doubt that Shakespeare was true.
But with another name, that rose could
have a different value.

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your plant varieties.**

Jacobacci & Associati is a Law Firm that has, since the day it was founded in the mids-1990s, specialized in the field of Intellectual Property, with a practice area dedicated entirely to the protection of New Plant Varieties, specifically focusing on the flower industry. Thanks to the experience we have gained over nearly two decades, our Professionals are able to offer the highest quality services in relation to (i) assistance in negotiating production and marketing contracts; (ii) development of tailor-made enforcement strategies at both the national and European levels; as well as(iii) legal assistance in civil, commercial and criminal litigation, including the arbitration and other ADR proceedings.

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