

Fashion Industry Puts On Its Game Face

Law360, New York (October 17, 2012, 2:14 PM ET) -- As fashion houses are presented with the ever-challenging goal of achieving and maintaining brand recognition, many are now attempting to engage consumers in both the real and virtual worlds. Gaming represents one nontraditional avenue that has undergone recent growth, as brands find value in connecting with existing and potential consumers through interactive online means.

Members of the fashion industry have historically utilized videogames as a way to reach consumers. Some successful fashion and videogame partnerships have included H&M and Maxis in connection with *The Sims 2*, Charlotte Ronson's fall 2009 feature in Nintendo's *Style Savvy*, and Xbox's collaboration with certain brands, such as Quiksilver Inc., and Skullcandy, to enable the function of stylized avatars.

Recently, forward-thinking companies are looking beyond videogames to explore the world of online gaming as a powerful marketing tool. Fashion Week Live, a Facebook game developed in association with IMG Fashion, is one example. Fashion Week Live provides its players with the opportunity to create and showcase fashionable looks and build a career in the fashion industry through various levels of the game.

Similarly, this past summer Aldo launched *Shoe Paradise*, an online game and contest that involved an end-user guiding Aldo's avatar through an obstacle course while collecting and trying on shoes, all in an effort to promote the brand's spring/summer collection. Conde Nast, a publisher whose properties include *Vanity Fair* and *Vogue*, has also entered the game with *Fashion Hazard*. The game for mobile phones features a model that must walk down a runway while avoiding a variety of absurd runway obstacles such as cobras and flying debris.

In addition to its marketing appeal, online gaming has also proven to be a valuable means of facilitating e-commerce. Whereas fashion-based games were once predominately designed for and marketed to young girls, now interactive platforms are increasingly aimed at an older age demographic with the specific goal of driving product sales. For example, *Stylmee*, a fashion game for the iPad that debuted this past spring, targets women ages 25 to 44.

Stylmee offers a multifaceted platform with the interactive element of a videogame on one hand, allowing end-users to create style boutiques and test their fashion knowledge, and the functionality of an e-commerce site on the other, allowing end-users to purchase real world versions of the items seen in the game.

Although an unlikely pairing, fashion and interactive games seem primed for success as the innovative use of online gaming for marketing and sales purposes continues to evolve. Fashion and gaming are both competitive industries by their own right and legal issues can arise when the two intersect. Development and production of the game require that counsel pay attention to the same rights and clearance issues that apply to motion picture legal, but often with the additional complication of negotiating a software license agreement for certain game architecture.

Additionally, trade dress and trademark protection applies as much to digital renderings of goods as they do to physical goods. This means that the maker of a videogame cannot infringe on the trademarks, or intellectual property in general, of another company in its videogame.

Further, the retail aspects of such games raise additional legal issues. For example, a fashion game that collects personally identifiable information from consumers will need to follow online privacy protection laws, which can vary from state to state and country to country. The makers of a game must also ensure they are not collecting PII from children under 13, or otherwise comply with a comprehensive set of laws concerning the online privacy of children.

Any game publisher will also need to determine its data retention policy, post its terms of service, and provide takedown procedures that comply with the Digital Millennium Copyright Act. The requirements will also change depending on the game's intended platform. If the game is for smartphones, then the maker needs to follow the developer guidelines of the smartphone's operating system. If the game is on a social media website like Facebook, that game will look to Facebook's set of policies to ensure compliance.

While making a game about trying on clothes is simple from a marketing perspective, actually letting that game into the wild to interact with intellectual property and consumer privacy laws can be altogether more complicated.

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